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Bennett, Ronan A H

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**Enforcing the Law in Revolutionary England:
Yorkshire, c.1640-c.1660**

Thesis submitted for the degree of Doctor of Philosophy
in the faculty of arts, London University.

Ronan A.H. Bennett
King's College
1987

Abstract

The thesis looks at crime and law enforcement in Yorkshire during the mid seventeenth century, and argues that the upheaval of the 1640s and 1650s had important short-term and longer-term consequences for the way in which order was maintained in the county.

A central theme is the impact of the military presence. For much of the period violence by soldiers against civilians was commonplace, and there were many reports of theft, systematic plundering and destruction of property. Bringing the soldiery under control became a priority of post-war local government; but, as the thesis shows, despite the severity with which individual soldiers were treated by the courts, military law-breaking was never fully curbed.

At the same time the county governors were faced with difficulties from other quarters: rioting and public disorders, and a series of natural disasters that brought widespread economic distress in their wake. Although in the early 1650s the state of the county improved, undercurrents of social, economic, religious and political tension threatened to upset the comparative calm and had serious implications for law enforcement.

Among the sources used are the depositions of the Northern Assize Circuit. This unique body of material, combined with other legal, administrative and parish-based records, enables the study to reconstruct the

context of law enforcement. It allows questions to be asked about how the machinery of criminal justice operated in practice, and about the social groups that dominated it. These questions are posed in the hope that they will throw light on the nature of the seventeenth-century system of criminal justice, and on the wider nature of local society and government in revolutionary England.

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Preface

All quotations in the original manuscripts have been modernised, and contractions have normally been extended. The spelling, capitalisation and punctuation of quotations from the printed sources, and those cited in the secondary sources, have been retained.

Dates are old style, except that the year has been taken to start on January 1st.

**Abbreviations
Used in Footnotes**

BCA	Bradford City Archives
BL	British Library
BIHR	Borthwick Institute of Historical Research
CDA	Calderdale District Archives
<i>CJ</i>	<i>Commons' Journals</i>
Heywood, <i>Diaries</i>	<i>The Rev. Oliver Heywood, 1630-1702: His autobiography, diaries, anecdote and event books, 4 vols., ed. J.H. Turner (Brighouse and Bingley, 1881-1885)</i>
HMC	Historical Manuscripts Commission (Reports)
LCA	Leeds City Archives
<i>LJ</i>	<i>Lords' Journals</i>
'OLP'	'Our Local Portfolio' (a series of articles published in the <i>Halifax Guardian</i> in the 1860s.
PRO	Public Record Office
VCH	Victoria County History
WYRO	West Yorkshire Record Office
YAS	Yorkshire Archaeological Society
YCA	York City Archives

Chapter One

Introduction

In a letter from York, Thomas Margetts, secretary to the council of officers of the Northern Army, wrote: 'In generall wee are all ever in a strugling, striving, fearing, hoping, marching, fighting posture.' The letter was written on the eve of the Second Civil War, but Margetts could just as easily have been describing conditions in the county a decade earlier as the trained bands assembled and prepared to confront the Covenanting army. Nor would his words have been out of place in 1659 when the overthrow of the Protectorate seemed to presage renewed turmoil, and in Yorkshire was remembered by Alice Thornton as a time when:

'wee weare all in a great confusion ... none knowing how the government of this land would fall ... none knowing whom to trust, or how to be secured from the raige, rapine and destruction from the soldiery ...'²

Between the outbreak of Bishops' Wars and the Restoration Yorkshire people experienced twenty years

1. *Clarke papers*, vol. 2, ed. C.H. Firth, pp. 8-9.
2. *The autobiography of Mrs Alice Thornton*, pp. 98-99.

of intermittent warfare, risings and conspiracies, and endured a permanent sense of insecurity and crisis. The purpose of this study is to look at how crime and law enforcement at the county level were affected by the upheaval of the 1640s and 1650s, and in doing so to ask questions about the nature of local society and government in revolutionary England.

These aims are pursued through a rich body of legal, administrative and parish-based sources. Although they contain frustrating gaps, which preclude some of the quantitative techniques developed in recent work on the history of crime, their abundance has made some selection unavoidable. In geographical terms, therefore, the thesis concentrates (although by no means exclusively) on the West Riding. There is also an imbalance in the respective treatment of petty and serious offences: the emphasis falls very much on the latter since they tell us most about the priorities and character of law enforcement. Petty offences and the issues they throw up, however, are not entirely ignored, and receive attention in a detailed study of Halifax parish and at different points in the thesis.

The study is essentially concerned with the short-term impact of events. It focuses on the pressures generated during the 1640s when Yorkshire became a major theatre of operations in a bitterly contested military struggle; and on the changed climate of the 1650s; a period of comparative calm, but one in which

undercurrents of social, economic, religious and political tension were never far from the surface.

A central theme is the impact of the military presence. At the height of the conflict as many as one person in six in the county was under arms. The civilian authorities, Royalist and Parliamentarian, exhibited an abiding concern with the discipline of their numerous and far-flung forces. But civilian and military priorities were invariably at odds, inevitably undermining attempts to curb the troops' excesses. Law-breaking by the soldiery was rife; throughout the 1640s there were reports of violence against civilians, systematic plundering, and destruction of property. Military unrest culminated in the mutinies by Parliamentary levies in 1647, but large-scale law-breaking persisted. Bringing the army under control and stamping out criminal behaviour among the troops became a priority of county government as it was gradually re-established following the Royalist defeat at Marston Moor.

Initially, the administration was badly placed to impose its will on the army. The Parliamentarian gentry had seen their authority wane as the army's prestige rose. The prominent role in local affairs assumed by army officers, few of whom showed much concern for civilian susceptibilities, provoked rancorous quarrels with the traditional rulers. Town corporations resented the military's often heavy-handed interference; the

gentlemen who oversaw the Parliamentary war effort in the county were quick to condemn actions they thought 'will beget an opinion that the sword hath a power above the Lawe'.³ The struggle to reverse that trend, to reassert the traditional organs of local government, and bring the restive soldiery to heel, forms part of the backcloth against which the administration of criminal justice in this period must be seen.

Economic conditions make up another part of the backcloth. The outbreak of hostilities brought the cloth trade, on which the populous West Riding textile towns depended, to a virtual standstill, and agriculture suffered from despoilation by marching armies. Hopes of an early post-war recovery were dashed when a series of natural disasters brought widespread distress in their wake. Plague and typhus, floods and high winds, crop failure and continuing 'deadness of trade' plunged the county into its worst economic crisis for a generation, and created for the already hard-pressed authorities a new emergency. Their energies and resources were increasingly taken up with the regulation of economic activity, supervision of poor relief, and suppression of vagrancy and begging; they also had to deal with large numbers of men and women driven to theft by hunger and desperation.

At the same time, riots and disorders were multiplying. Some of these were no more than private

3. Cited in J.S. Morrill, *The revolt of the provinces*, p. 76.

squabbles over disputed property rights, but others derived from long-standing social and economic grievances which had been fanned by the Civil War. Historians of sixteenth- and seventeenth-century Yorkshire have emphasised the growth and independence of the 'middling sort' - minor gentry, yeomen, richer husbandmen and affluent tradesmen - particularly in the economically more advanced areas of the West Riding. They have also noted an anterior revival in manorialism: landlords, seeking to keep their heads above the financial waters whipped up by the price revolution, resuscitated decaying feudal rights, and attempted through their courts leet and baron to impose onerous rents and services on tenants. The resulting tensions were heightened by the divergent pattern of allegiances that emerged during the Civil War. In Yorkshire support for Parliament was rooted in the 'middling sort', while many of the leading gentry adhered to the king. The defeat of the king was, therefore, in many places, the defeat of the landlord. In some areas this gave tenants a unique opportunity to attempt to reverse recent developments, and led to a series of violent clashes over property rights, tithes and rents. Allegations and counter-allegations of riot, forcible disseisin, close-breaking and assault crowded in on the courts.

These bitter disputes underline the often unstable relationship between the gentry and the 'middling

sort', a relationship which is of vital significance to the present study. These two groups dominated the machinery of law enforcement: the gentry as magistrates, the 'middling sort' as grand and petty jurors and as parish officers. Any adjustment to the balance between them could have important implications. Take, for instance, the question of courtroom decision-making: here a central issue revolves around the degree of juries' independence from judicial pressure. Was this altered, in any way, by political developments that, in the short term at least, seemed to enhance the broader position in the community of the 'middling sort'? Did this, in turn, have any appreciable impact on the pattern of trial verdicts, or on patterns of punishment?

During the 1650s the state of the county improved as the institutions of local government recovered, as the soldiers' discipline slowly tightened, and economic conditions eased. But the improvement did not bring a total calm. Yorkshire felt the shock waves of the Worcester campaign, and, later, Royalist conspiracies put the authorities on alert from time to time. From a military point of view, the activities of Royalist agents in the county were a nonsense, doomed to failure before they properly got under way. But they did succeed in taxing the limited resources of local policing. They also stirred up latent dissension running through post-war Yorkshire, and, for the

historian, raise the issue of the extent to which the administration of criminal justice in this period became partisan and politicised.

From the other end of the spectrum - in social and political terms as well as in religious ones - the emergence in the early 1650s of radical religious sects, especially the Quakers, brought the authorities a new set of dilemmas. Many saw Quakers as both blasphemous and socially subversive, and they wanted action against the sect. But Fox's early missions to Yorkshire had been successful in garnering popular support and the sympathy of some prominent magistrates. Feelings were polarised, and the prosecution of Quakers quickly became a divisive issue, the more so since the Friends were well organised and capable of mounting effective propaganda counter-attacks.

Part of the Quakers' propaganda was a relentless, if inchoate, critique of prisons, courts, lawyers and the law itself. That such a critique emerged was an outrage to the ruling élite, unthinkable in normal times. It serves to emphasise that law enforcement, like other aspects of society and government, was not immune from the 'chaos of miseries' that had been predicted for Yorkshire as the corollary of Civil War.⁴ What follows is an attempt to describe and analyse the

4. The prediction, made in 1641, was Thomas Stockdale's: *The Fairfax correspondence*, vol. 2, ed. G. Johnson, p. 292.

pressures on the system of criminal justice, and the responses to them, during this period of 'strugling, ... fearing, ... [and] fighting'.

Chapter Two

The county and its courts

I

The county of Yorkshire was the biggest in England, covering roughly three million acres or 6,000 square miles. It was also the most populous: at the accession of James I approximately 300,000 people lived within its boundaries; by the mid 1660s there were between 350,000 and 430,000, a tenth of the country's total.¹ As Table 2.1 shows, this population was not evenly distributed. Less than a fifth lived in the East Riding, slightly more than a quarter in the North Riding, and a little above half in the West Riding.

Very few lived in settlements of any great size. There were only three towns with more than 5,000 inhabitants: York, Hull and Leeds. Of these York, with a population that fluctuated around the 10,000-12,000 mark, was easily the largest. In 1640, despite a century-long economic and demographic crisis, York was still the greatest urban community in the northern

1. Thomas Allen, *A new and complete history of the county of York*, vol. 1, pp. 131-32; A.G. Dickens, 'The extent and character of recusancy in Yorkshire, 1604', p. 32; J.D. Purdy, 'The hearth tax returns for Yorkshire', pp. 316-17.

TABLE 2.1

Population distribution based on the
1664 hearth tax returns

	<i>Population estimates</i>		
	<i>(Based on multipliers of 4 and 5)</i>		<i>%</i>
Vest Riding	176.000	220.000	51.1
North Riding	96.000	120.000	27.9
East Riding	64.000	80.000	18.6
York City	8.500	10.500	2.4
TOTAL	344.500	430.500	100.0

SOURCE: J.D. Purdy, 'The hearth tax returns for Yorkshire',
pp. 316-17.

counties, and served as their administrative and leading social centre.²

York's sixteenth-century decline was due in large measure to the emergence of Hull as a commercial rival. The port, one of the most flourishing in Europe, was the county's second urban centre. However, periodic trade depression and intermittent outbreaks of plague and typhus kept a check on demographic expansion. By 1640 its population had still to pass 6,000.³

Hull's wealth was based on the export of kersies manufactured in the West Riding and channelled through Leeds and Wakefield. Over the course of the seventeenth century Leeds developed into Yorkshire's main clothing

2. VCH, *City of York*, p. 162; P. Clark and P. Slack, *English Towns in transition, 1500-1700*, p. 54. Purdy estimates York's population in the 1660s to have been between 8,500 and 10,500: 'The hearth tax returns for Yorkshire', p. 317.
3. Clark and Slack, *English towns in transition*, pp. 46-53; VCH, *City of York*, p. 169; VCH, *East Riding*, vol. 1, pp. 138, 155-57, 312-35; R. Davies, *The trade and shipping of Hull, 1500-1700*, pp. 6-7, 24-26.

town, and among its 5,000-6,000 inhabitants it counted a wealthy merchant-clothier class.⁴ The neighbouring towns of Wakefield and Halifax supported smaller populations, and although later superceded by Leeds, both were, in the mid seventeenth century, important focuses for the cloth trade.⁵

Cloth-making was the economic mainstay of the surrounding Pennine communities. In 1638 10,000 men, women and children in the parishes of Bradford, Bingley and Shipley were said to be employed in the textile industry.⁶ The region was, to quote J.T. Cliffe, 'the scene of a minor industrial revolution which in some areas was transforming the structure of the local economy and, to a certain extent, the face of the landscape'.⁷

4. G.C.F. Forster, 'The early years of Leeds corporation'; J.W. Kirby, 'The rulers of Leeds: Gentry, clothiers and merchants, c. 1425-1626'; idem, Introduction to 'The manor and borough of Leeds, 1425-1662: An edition of documents'; M.W. Beresford, 'Leeds in 1628: A "Ridinge observation" from the City of London'; Purdy, 'The hearth tax returns for Yorkshire', pp. 285, 348. The figure of 12,000 put on Leeds's population in 1639 (by John Taylor) and cited by J.T. Cliffe, *The Yorkshire gentry from the Reformation to the Civil War*, p. 2, is certainly an over-estimate.
5. Wakefield's population in 1664 has been estimated by Purdy, 'The hearth tax returns for Yorkshire', p. 356, at between 1,600 and 2,000, which is possibly conservative but nearer the mark than the figure suggested by J.W. Walker, *Wakefield: Its history and people*, vol. 2, p. 409 (c.8,000 in 1547); Clark and Slack, *English towns in transition*, p. 162. Halifax's population in 1642 stood at about 4,400: M.J. Francois, 'The social and economic development of Halifax, 1558-1640', p. 226.
6. H.H. Heaton, *The Yorkshire woollen and worsted industries*, pp. 183, 197.
7. *The Yorkshire gentry*, p. 1.

Although driven primarily by cloth-making, this 'minor industrial revolution' had other motors. South of the textile parishes, in the wapentake of Stafforth-Tickhill, lay a region already famous for its iron-working and steel-making. Cutlery, files, saws, nails and agricultural tools were fashioned by craftsmen in the numerous smithies of Hallamshire.* Although metal-working was predominantly small-scale in organisation, there were successful large ironmasters in Sheffield and Rotherham; and, further north, at Kirkstall, near Leeds, the Savile family owned a huge ironworks, conservatively valued in 1631 at 1,000 marks a year.*

The needs of the ironmasters for fuel were supplied from coal mines around Leeds, Wakefield and Barnsley. Some of these had been in operation since as early as the thirteenth century, and hundreds of new pits were opened from the beginning of Elizabeth's reign by thrusting landlords quick to seize on fresh opportunities for profit.⁸ Among the King's Bench archives are numerous coroners' inquests recording the death of colliers: testimony to how widespread mining was, and how hazardous.¹¹

8. C.G.A. Clay, *Economic expansion and social change: England, 1500-1700*, vol. 1, p. 101; vol. 2, pp. 37, 54, 56; D.G. Hey, 'A dual economy in south Yorkshire'.
9. Purdy, 'The hearth tax returns for Yorkshire', p. 360; Cliffe, *The Yorkshire gentry*, p. 64.
10. VCH, *A history of Yorkshire*, vol. 2, p. 338; J.U. Nef, *The rise of the British coal industry*, vol. 1, pp. 57-60.
11. Eg. PRO, KB 9/865, mm. 32-34; 9/869, m. 128; 9/875, m. 145.

Coal was also mined in remoter corners of the county, as was lead, and alum, the essential mordant for the textile industry.¹² So valuable were Yorkshire's mineral resources that they were stressed by the Royalist Sir William Davenant as one of the chief reasons for contesting control of the county during the Civil War: they were, he wrote in 1644, 'the three great mines of England (coal, alum, and lead) ..., and a constant treasure ...'.¹³

In the North and East Ridings there were fewer signs of industrial activity. Stocking-knitting provided some by-employment in the bleak moorlands and fells. There were isolated mining concerns, and there was the massive blast furnace at Rievaulx (North Riding) which in the 1590s was producing more than a ton of bar iron a day.¹⁴

The diversity of Yorkshire's economy could be stressed much further (to take into account, for example, its fisheries, tanneries and stone-quarries). But for all this the fact remains that agriculture was the backbone of the economy. Even in the most industrialised parishes men and women carried on their

12. Especially in Ribblesdale, Wharfedale, Wensleydale and Swaledale: R. Fieldhouse and B. Jennings, *A history of Richmond and Swaledale*, p. 198; A. Rastrick and B. Jennings, *A history of lead-mining in the Pennines*. Cf. VCH, *A history of Yorkshire*, vol. 2, pp. 341-51.

13. *The memoirs and correspondence of Prince Rupert and the Cavaliers*, vol. 2, ed. Eliot Warburton, p. 435.

14. *A history of Helmsley, Rievaulx and district*, ed. J. McDonnell, pp. 177-79.

trades in tandem with work in the fields. In metal-working areas like Ecclesfield, as David Hey has shown, a dual economy operated in which the 'nailer-farmer' combined labour in the workshop with the cultivation of a small-holding; and in the textile districts the terms 'clothier' and 'yeoman' were invariably regarded as interchangeable: here people lived, as H.H. Heaton has written, by the joint produce of 'the land and the loom'.¹⁵

The produce of the land varied according to its physical features and soil types. The basic division was between the highland and lowland zones: the former relied on extensive sheep-walks while the latter grew corn, fattened cattle and bred horses. This is, of course, a crude simplification of what W. Harwood Long has shown to be a highly complex pattern of regional farming: farms in the dales, moors, wolds, marshes and plains differed immensely in size and value, in the kind of crops cultivated, and livestock pastured.¹⁶

They differed too in working practices and techniques. In these Yorkshire farmers were often charged with being backward. James Ryther, a Kent-born gentleman who settled in the later sixteenth century at Harewood near Leeds, attributed the abundance of poor

15. A.G. Dickens, *Lollards and Protestants in the diocese of York*, p. 3; D.G. Hey, 'A dual economy in south Yorkshire'; Heaton, *The Yorkshire woollen and worsted industries*, p. 93.
16. 'Regional farming in seventeenth-century Yorkshire'. Cf. *The Agrarian history of England and Wales*, vol. 4, ed. Joan Thirsk, pp. 28-40.

people he found there to 'lardge wastes and commons' standing unimproved. 'Too savage a thinge yt is', he wrote, 'to see so many people unimployed for lacke of land, and so much land frutles for lac of people.'" Yorkshire did contain tracts that were, in Camden's words, 'pregnant and fruitful'.¹⁸ The Vale of York and parts of Holderness served as granaries for the less fertile districts.¹⁹ But much of the county, including the densely populated clothing parishes, was poor pasture country, where the land was described as 'rude and arrogant', 'some of it not worth 2d the acre by the year, naturally being nothing but short heath moss and stones, and almost no grass ...'.²⁰

Attempts at improvement through enclosure were patchy. In the West Riding, where the movement was most advanced, only 2,345 of its 1,568,000 acres were enclosed by 1517, and although the pace quickened during the price revolution, by the time of the Civil War numerous manors retained intact their open fields and wastes.²¹ That progress was slow owed much to the

17. W.J. Craig, 'James Ryther of Harewood and his letters to William Cecil, Lord Burghley', part 2, p. 135.

18. W. Camden, *Britannia*, vol. 2, ed. E. Gibson, p. 81.

19. *The agrarian history of England and Wales*, vol. 4, ed. Thirsk, pp. 32-33, 35.

20. M.J. Ellis, 'A study in the manorial history of Halifax parish in the sixteenth and seventeenth centuries', part 2, p. 425; Francois, 'The economic and social development of Halifax, 1558-1640', p. 268.

21. Or 0.12: I.S. Leadam, 'The inquisition of 1517: Inclosures and evictions'; Cliffe, *The Yorkshire gentry*, p. 36; Sir Thomas Lawson-Tancred, *Records of a Yorkshire manor*, pp. 95-96.

attitude of the poorer commoners.²² Perceiving threats to their livelihoods they appealed to manorial courts for protection, and, if denied, took action for themselves. At Crakehall people tore down fences and forcibly took possession of the lands; there was resistance at Newsham Moor and at Anlaby where attacks were sustained and well organised.²³ Drainage schemes undertaken in the 7,000 acres of the Level of Hatfield Chase aroused bitter opposition which verged on open warfare as commoners struggled to defend their rights.²⁴ 'Our use is heer', wrote Ryther at the end of the sixteenth century, 'at unlawfull tymes in ryotous manner to cast downe inclosures, thoughe warrantid by lawe.'²⁵

Seventeenth-century Yorkshire farming, however, was not without its success stories. Through careful husbandry men like Henry Best of Elmswell enjoyed a high standard of living as yeomen-farmers.²⁶ Improving

22. It was rarely enthusiastic. For example, at Preston in Holderness in 1601 villagers objected to the conversion of pasture on the grounds that it would bring about 'the utter undoing of the poorer sort': *The agrarian history of England and Wales*, vol. 4, ed. Thirsk, p. 407. At Hipperholme enclosure of waste was said in 1632 to have led 'to ye greate wronge and annoyance of ye inhabitants': Ellis, 'A study in the manorial history of Halifax parish in the sixteenth and seventeenth centuries', part 2, p. 426.

23. VCH, *A history of Yorkshire*, vol. 3, p. 479.

24. K. Lindley, *Fenland riots and the English Revolution*.

25. Craig, 'James Ryther of Harewood', part 2, p. 135.

26. *The farming and memorandum books of Henry Best of Elmswell, 1642*, ed. Donald Woodward; *The agrarian history of England and Wales*, vol. 4, ed. Thirsk, p. 34.

landowners like Sir Arthur Ingram of Temple Newsam, and the Brights of Badsworth and Carbrook were able through the ruthless exploitation of resources to consolidate and expand their estates.²⁷ And if subsistence farming was widespread, so too was production for the market: the county was peppered with towns famous for their trade in horses, sheep, cattle, grain and wool.²⁸ Yorkshire's economy, with its many diverse elements, was far from uniformly backward.

Even so, it was an economy without the capacity to absorb the stresses generated by a rapidly burgeoning population.²⁹ Nor did it effectively cushion the impact of depression in the cloth trade which periodically threw thousands out of work. From all corners of Yorkshire throughout the late sixteenth and seventeenth centuries came frantic reports of escalating poverty.³⁰

27. A.F. Upton, *Sir Arthur Ingram; Peter Roebuck, Yorkshire baronets, 1640-1760: Families estates and fortunes*, esp. pp. 203-22.
28. *The agrarian history of England and Wales*, vol. 4, ed. Thirsk, pp. 468-69, 494
29. There is insufficient data to chart the rise of the population in any detail, but figures from certain localities suggest it doubled between 1500 and 1640 (mirroring national trends: E.A. Wrigley and R.S. Schofield, *The population history of England, 1541-1871*, pp. 208-9) and point to the later decades of the sixteenth and the early decades of the seventeenth centuries as the period of peak growth: eg. Francois, 'The economic and social development of Halifax, 1558-1640', pp. 225-26; Fieldhouse and Jennings, *A history of Richmond and Swaledale*, p. 106.
30. *The agrarian history of England and Wales*, vol. 4, ed. Thirsk, p. 410; Walker, *Wakefield: Its history and people*, vol. 2, pp. 419-20; Heaton, *The Yorkshire woollen and worsted industries*, pp. 189-90.

In the 1580s and 1590s James Ryther sent a series of letters to Lord Burghley in which he stressed the scale of the problem. 'Our poore ar without nombre or order,' he concluded, 'We breed of all sortes much faster than they do further south.'³¹

Ryther may have been exaggerating - 'further south' was not without its own problems - but there can be no doubting the extent and scope of the difficulties facing local communities in Tudor and Stuart Yorkshire. In 1615, for example, 725 of Sheffield's 2,207 inhabitants were described as 'begging poore', and another 160 were 'such (though they beg not) as are not able to abide the storme of one fortnight's sickness, but would be thereby driven to beggary'.³² In 1608 the inhabitants of Richmond were reported to be 'deeply charged for the relief of their ... many poor', and a 1631 survey of the town, which revealed that destitution had increased alarmingly, resulted in poor rates being doubled.³³ At Hull, according to G.C.F. Forster, there was 'a very large number of poor'.³⁴ At York 'the extent of poverty', writes D.M. Palliser,

31. Craig, 'James Ryther of Harewood', part 1, p. 109.

32. Joseph Hunter, *Hallamshire: The history and topography of the parish of Sheffield*, p. 148.

33. Fieldhouse and Jennings, *A history of Richmond and Swaledale*, pp. 277, 290.

34. VCH, *East Riding*, vol. 1, p. 162.

'was clearly enormous', a fact reflected in the rising number of families eligible for relief."

Widespread poverty was seen in the south as evidence of the county's general backwardness." Further, the people, 'By affynytie with the Skottes and borderers' were 'looked upon as rude and barbarous'; the houses, even of a great clothing town like Leeds, appeared to southern eyes 'ancient meane and lowe built'; the bread, repulsive to the southern palate, 'a hungry raw tasted manchet ... so coarse and black you will not care to eat any of it'." The criticisms were taken to heart: in a petition to the Long Parliament lamenting the lack of educational opportunities in the county the nobility and gentry asked for a university 'as a special means of washing

35. D.M. Palliser, *Tudor York*, p. 144; VCH, *City of York*, pp. 170-73. Purdy's analysis of the 1664 hearth tax returns, 'The hearth tax returns for Yorkshire', esp. pp. 99, 152, 157, 231, suggests that about a quarter of all Yorkshire households were non-chargeable, most of them on grounds of poverty. There was, of course, considerable variation from place to place. In the Hallamshire village of Ecclesfield, for example, only 10% of households were non-chargeable: D.G. Hey, *The village of Ecclesfield*, pp. 47, 67. In Halifax parish the proportion was almost a third, and in a number of the parish's townships it approached a half: PRO, E.179/210/393. In some settlements the poor greatly outnumbered the rest: at Filey in the East Riding no less than sixty of its seventy-seven households were exempted: Purdy, 'The hearth tax returns for Yorkshire', p. 111.
36. R.B. Smith, *Land and politics in the age of Henry VIII: The West Riding of Yorkshire*, pp. 28-33, suggests, however, that the poverty of the Pennine district has been greatly overdrawn.
37. Craig, 'James Ryther of Harewood', part 1, p. 108; *The Fairfax correspondence*, vol. 2, ed. G. Johnson, p. 278; Beresford, 'Leeds in 1628', p. 135; HMC, Portland MSS, vol. 2, p. 312.

us from the stain of rudeness and incivility, and of rendering us ... not much inferior to others in religion and conversation'.³⁸

In fact, educational opportunities had been steadily expanding since the mid sixteenth century, though they were restricted to the reasonably well-to-do.³⁹ However, better schooling, to the dismay of its sponsors, did not succeed in completely wiping out religious conservatism. Indeed, some claimed to detect an increase in 'popery', but by the accession of James I Catholic survivalism was confined to isolated pockets of the remoter North and East Ridings where it was sheltered by a small number of recusant gentry families.⁴⁰ In the West Riding, where there was a long tradition of religious radicalism, the new faith took firm root and developed into what A.G. Dickens has described as a 'fierce Protestantism'.⁴¹ It was this 'fierce Protestantism' that did so much to determine patterns of popular allegiance during the Civil War,

38. *The Fairfax correspondence*, ed. Johnson, vol. 2, p. 278.

39. P.J. Vallis and W.E. Tate, *A register of old Yorkshire grammar schools*; VCH, *East Riding*, vol. 2, pp. 163, 262; vol. 3, p. 173; W.K. Jordan, *The charities of rural England, 1480-1660*, pp. 299-350; M.W. Garside, 'Halifax schools prior to 1700'.

40. Dickens, 'The extent and character of recusancy in Yorkshire, 1604'. According to Dickens there were well below 3,000 recusants and non-communicants in the county in 1604.

41. Dickens, *Lollards and Protestants in the diocese of York*, p. 14. Cf. T.W. Hanson, 'Dr. Favour as Protestant disputant'; idem, 'Halifax exercises'; J.E.C. Hill, *The world turned upside down*, pp. 77, 81-85; R.A. Marchant, *The puritans and the church courts in the diocese of York*, pp. 40-41, 46, 91.

and, during the Interregnum, played a key part in mapping out the priorities of law enforcement.

The picture of mid-seventeenth-century Yorkshire that emerges, then, is of a physically large and diverse county with an economy, despite some industrial or semi-industrial influences, which was overwhelmingly agrarian. The scattered population for the most part lived in small settlements where daily life was closely monitored by the local magistrate, the parson, and the lord of the manor or his bailiff. Typical of the smaller, fielden settlements in which this kind of social organisation was to be found was the hamlet of Elmswell (East Riding). With fewer than 100 souls, it was, according to Donald Woodward, 'Throughout the seventeenth century a closed community, tightly controlled' by the leading family, the Bests.⁴²

But it would be misleading to portray this as a wholly static society, or to exaggerate the degree of regulation and supervision. The social organisation of the uplands, marshes, fens and forests was comparatively loose.⁴³ The towns, however small, attracted large numbers of immigrants: population turnover was high even in the relatively stable fielden parishes of the Vale of York or the East Riding. The traffic along the Great North Road must have added

42. *The farming and memorandum books of Henry Best*, ed. Woodward, pp. xxxv-vi.

43. *The agrarian history of England and Wales*, vol. 4, ed. Thirsk, pp. 34, 412.

immensely to the fluidity of a society in which 'strangers' were still regarded with suspicion but were no longer a novelty. Itinerant workers, wanderers and vagrants were common sights, and the fairly numerous arrests on criminal charges of men and women from Scotland, Cumberland, Northumberland, Durham, Lancashire, Warwickshire, London, Devon and elsewhere are reminders of the presence in the county of a transient population."

II

Responsibility for maintaining order in this vast region fell in the first instance on the gentry, the county's ruling élite." They staffed commissions of the peace; officered the militia; provided deputies for lords lieutenant and high sheriffs; represented the shire, or one of its boroughs, in the House of Commons. They also exercised considerable influence through their manorial courts which in mid-seventeenth-century Yorkshire, unlike in many other parts of England, remained vigorous bodies as far as the regulation of the local community was concerned.

44. PRO, ASSI 45/1/2/12; 45/1/4/10, 11, 30-32; 45/5/2/28; 45/5/4/18-19, 23, 49; 45/6/1/176; 44/3 (indictments of John Hartley et al, Lent 1650; Robert Hinck and Mary Clarke, Summer 1649); 44/6 (indictment of John Phillips, Lent 1656).
45. There were 679 armigerous families in 1642: Cliffe, *The Yorkshire gentry*, p. 13.

But the gentry did not hold total sway over county affairs. As a result of more than a century of trade expansion and farming for the market there was by 1640 a prosperous 'middling sort'. The boundaries that circumscribe this class are far from clear. The term, a contemporary one, is used here as a short-hand for a wide range of social and occupational groups - minor gentry, yeomen, richer husbandmen and the more well-to-do merchants and tradesmen - rather less affluent than the armigerous gentry while being better off than the ordinary labourer or husbandman. The size of the 'middling sort' is equally uncertain. Purdy's analysis of the hearth tax returns suggests that it may have been about 12% of the population, although generalising from house-size alone is at best rough-and-ready, and, in any case, there would have been a great deal of regional variation.⁴⁶ At Sheffield in 1615 the 'best sorte', a synonym for 'middling sort', was said to comprise about 5% of the population.⁴⁷ At Halifax, as Chapter Three suggests, it was probably closer to 20%.

46. 'The hearth tax returns for Yorkshire', pp. 99, 152, 157, 231, show that 12.1% of houses consisted of between three and five hearths and a further 3.2% had more than six hearths. The data from Halifax parish (below, ch. 3) suggest that *very rough* inferences can be drawn from house-size about the status of the occupants, and that those inhabiting dwellings with three hearths or more probably belonged to the more well-to-do sections of the community. This is, it need hardly be added, an extremely crude system of categorisation, but in the absence of anything like an occupational census it at least provides some indication of the relative strengths of the different social groups.

47. Hunter, *Hallamshire: The history and topography of the parish of Sheffield*, p. 148.

Men of the 'middling sort' had comparatively little standing in the county, but in their towns and villages they wielded an authority whose immediacy and force surpassed that of the over-stretched and frequently (physically) distant magistrate. Their power in the local community was exercised through their hold on parish offices - constable, churchwarden, overseer of the poor, and leet juror. Thus, they can be considered as the local ruling élite.

The local élite (the 'middling sort') and the county élite (the gentry) between them dominated the system of criminal justice. Subsequent chapters will explore in detail, and at different levels, the respective roles played by the two groups. But what of the system itself? How was it organised?

The system of criminal justice was a complex arrangement of ill-defined, overlapping and concurrent jurisdictions. At the top was the court of King's Bench which, with its powers of review, had a supervisory role over the inferior courts. It also tried causes originating in the county: with few exceptions, these were misdemeanours, removed on writs of *certiorari* by defendants who, for a mixture of personal or political reasons, believed their cases stood better prospects at Westminster.⁴⁸

48. J.H. Baker, 'Criminal courts and procedure at common law', pp. 26-27; J.A. Sharpe, *Crime in early-modern England, 1550-1750*, pp. 21-22. King's Bench was also a court of first

The courts of quarter sessions and assizes dealt with the great majority of criminal business triable on indictment. Assize judges, armed with commissions of oyer and terminer, visited the shire twice a year: in March (usually) for the Lent or Spring meeting, and again in July or August for the Summer sitting.⁴⁹ Except when a special one-day assize was held at Hull, York was the first town visited by the judges on their perambulation of the Northern Circuit.⁵⁰

The judges sat first in the Guildhall at York to try prisoners arraigned for crimes committed within the City precincts and the Ainsty.⁵¹ For the main sitting they then moved to York Castle, a dilapidated building which also served as the county gaol.⁵² In general assizes dealt with the more serious offences against

(n, 48 cont.)

instance, but again the great majority of the cases coming before the court in this way were misdemeanours: M. Blatcher, *The court of King's Bench, 1450-1550: A study in self-help*, esp. chs. 1 and 4, indicates that this was the position for at least two centuries before 1640.

49. For a summary of the organisation of the Northern Circuit: J.S. Cockburn, 'The Northern Assize Circuit'.
50. Assizes were held in Hull on at least twelve occasions between 1658 and 1678: J.S. Cockburn, *A history of English assizes, 1558-1714*, pp. 45-46.
51. PRO, ASSI 42/1, ff. 1, 14, 25, 49 and passim.
52. PRO, ASSI 42/1, ff. 3, 15, 27 and passim. Throughout this period there were regular complaints about the decaying fabric of York Castle: ASSI 42/1, ff. 17, 21-22; 45/2/1/293. On occasion this led to escapes: in March 1654 six prisoners 'did work through the stone wall in one night, the weakness whereof was presented to the grand jury the last assizes': ASSI 44/6, (affadavit of John Thackeray et al, dated March 9, 1654). Cf. SP 16/342/6 (1636 [?]).

property and the person. The punishments at the court's disposal included fines, stocking, imprisonment, transportation, whipping, branding, burning, quartering and hanging.

Until 1641, as J.S. Cockburn has noted, assize judges at York exercised a jurisdiction which 'substantially duplicated' that of the Council of the North.⁵³ The Council, resurrected in 1537 to enforce the religious settlement, had among its other objectives, the 'speedy and indifferent administration of justice between party and party'.⁵⁴ It proved popular with litigants before its abolition by the Long Parliament left assizes as the principal conduit through which justice was administered and supervised.

The jurisdiction of York assizes also overlapped with that of the various courts of quarter sessions. There were separate quarter sessions for each of the three Ridings, and they dealt with a wide variety of criminal and civil actions. West Riding JP Thomas Stockdale of Bilton Park reported after one meeting (in 1642) that 'no matter of great moment [came] to the court: the business was for the most part of petty differences'.⁵⁵ On the whole this was true for most meetings of quarter sessions, and the JPs' time was normally taken up with petty larcenies, assaults, and

53. 'The Northern assize circuit', pp. 123-25.

54. F.W. Brooks, *York and the Council of the North*, p. 5.

55. *The Fairfax correspondence*, vol. 2, ed. Johnson, p. 298.

misdeameanours, although on occasion they tried serious felonies such as robbery, arson, witchcraft, rape, infanticide and manslaughter.⁵⁶ The most usual punishments imposed by magistrates were whipping, branding and fining. But death sentences were still sometimes ordered: for example, by West Riding JPs in 1648, 1653 and 1656, and by their North Riding colleagues in 1654.⁵⁷

The different courts of quarter sessions exhibited some diversity in their administrative organisation. The East Riding was alone in having all its meetings held in the one town, almost always Beverley.⁵⁸ In the North Riding, on the other hand, JPs met for a united sessions at Easter, usually at Thirsk. For its other three meetings they divided the Riding into western and eastern wapentakes, meeting at Richmond, and Malton or Helmsley respectively. While such arrangements helped

56. Eg. WYRO, QS 4/1 (indictment of William Smyth, Epiphany 1639 (Barnsley)); 4/2, f. 20; 4/4, ff. 24v, 109, 196, 220v; 4/5, f. 3; 4/6, ff. 67v, 76v, 91; 4/7, f. 74v. It is noteworthy that a large proportion of these serious cases resulted in returns of *ignoramus* by the grand jury or in acquittals. It may have been that serious offences in which the evidence was thought to be weak, or the prosecution maliciously initiated, went to quarter sessions rather than assizes. Trials for more serious forms of larceny - horse-stealing, burglary, and breaking and entering - were still relatively common at West Riding sessions during this period: see below, chs. 6 and 9.

57. WYRO, QS 4/2. ff. 45-45v, f. 184, 4/4, f. 7v; *North Riding quarter sessions records*, ed. J.C. Atkinson, vol. 5, p. 158. The sentences were passed on horse thieves and a vagrant taken begging, and apparently carried out.

58. And occasionally at Pocklington: Forster, *The East Riding justices of the peace in the seventeenth century*, pp. 30-31.

to ensure that local problems were seen to by local men, they also tended to encourage, as G.C.F. Forster, the leading authority on the Tudor and Stuart Yorkshire magistracy, has observed, particularism, factionalism and undesirable variations in practice.⁵⁹

A similar arrangement pertained in the West Riding where JPs met for a united Easter sessions at Pontefract but otherwise divided the Riding into three districts.⁶⁰ The northern district consisted of the thinly populated, predominantly pastoral wapentakes of Ewcross, Staincliffe and Claro, and JPs serving this region met at Wetherby in January, at Skipton in July and at Knaresborough in October. The comparatively more urbanised and industrialised wapentakes of Agbrigg, Morley, Skyrack and Barkston Ash formed the middle district, and quarter sessions normally met at Wakefield or Leeds.⁶¹ Sessions for the southern wapentakes of Osgoldcross, Staincross, and Stafforth-Tickhill, by and large an area of mixed husbandry sprinkled with semi-industrial towns and villages, were held at Barnsley, Rotherham and Doncaster.⁶²

59. Forster, 'The North Riding justices and their sessions' and 'Faction and county government in early-Stuart Yorkshire'.

60. WYRO, QS, 4/1-8.

61. Before 1642 JPs held a Michaelmas sessions for the middle wapentakes at Halifax: WYRO, QS 4/1, *passim*. The practice had been discontinued by 1647. Occasionally, JPs serving the middle district also met at Bradford: QS 4/4, ff. 115-18.

62. In the same sequence, occasionally interrupted, as the northern wapentakes. JPs at sessions held by adjournment generally heard cases originating within their own

The jurisdiction of quarter sessions and assizes was qualified by the judicial privileges claimed by the Bishop of Durham over his franchises in the county, and by borough courts, such as those kept at York, Hull, and Leeds.⁶³ By the mid seventeenth century, however, these were confining themselves, in the main, to misdemeanours.⁶⁴

III

Serious offences went to assizes and quarter sessions, and it is with these courts that the study is primarily concerned. Unfortunately, the archives are far from complete. For the period under review the only East Riding sessions papers to survive are for 1647-1651;

(n, 62 cont.)

districts, although it was not unknown for prisoners and litigants to have their cases tried in a district other than the one in which the crime was committed.

63. YCA, F.7; VCH, *The East Riding*, vol. 1, pp. 126-30. Forster, 'The early years of Leeds corporation', p. 256, points out that the charter of 1661 allowed the mayor and aldermen of Leeds to hold their own courts of quarter sessions. Indictments removed by certiorari to King's Bench show that borough quarter sessions were being held at Leeds in the 1640s: PRO, KB 9/857, mm. 135-37. The palatine liberties of Beverley and Ripon had their own commissions of the peace: C.181/5, ff.18, 51-52; C.231/5, f. 174. Cf. Cliffe, *The Yorkshire gentry*, p. 231; Cockburn, *A history of English assizes*, pp. 42-44.
64. At the summer 1638 meeting of York quarter sessions, for example, twenty-nine people were tried: one for petty larceny and the remainder for misdemeanours such as unapprenticed trading, unlicensed selling of ale, assault, neglect of watch and ward, playing unlawful games, failure to carry out street repairs and so forth. Recognisances in respect of thirty-three people were also entered (the reasons were not specified): YCA, F.7, ff. 9-20.

those for the North Riding, although dating from the 1610s, are in crucial respects unsatisfactory." The West Riding records, on the other hand, which consist of a near-complete series of indictment and order books, are both qualitatively and quantitatively superior, and have been used as the study's statistical core."

Or rather half the core; the other half is provided by the assize files of the Northern Circuit. These include thousands of depositions which do much to fill in the background to serious crime and law enforcement. Many assize indictments, however, have been lost or destroyed, leaving gaps than can only partially be made good by gaol books and calendars.

65. For an evaluation of the sessions records: Forster, 'County government in Yorkshire during the Interregnum', 'The North Riding justices and their sessions, 1603-1625', and *The East Riding justices of the peace in the seventeenth century*.
66. WYRO, QS 4/1-8 and QS 10/1-3 are the indictment and order books for this period. The earliest indictment book dates from October 1637 and goes up to the summer of 1642. For the next three years no courts were held owing to the disruption caused by the Civil War. During 1645 and 1646 there seem to have been intermittent meetings of quarter sessions but no record of their transactions has survived (see Chapter Four). The first post-war court for which there is an indictment book met at Easter 1647. From then on records survive in an unbroken series with only the odd page of an indictment book missing.

The format of the indictment books is fairly standard; but there is one important variation. Before 1647 clerks did not make a practice of entering details of *ignoramus* bills (that is, bills rejected by the grand jury); after 1647, they were more or less consistently noted, although there was the occasional gap (for example in 1658-1659). To avoid any distortion, therefore, Table 2.3 includes only true bills (that is, those endorsed by the grand jury).

Where these survive they carry useful supplementary information about the volume of assize business, and the pattern of verdicts and punishments; but details about the nature of the offences and the circumstances in which they were committed are absent from this class of document.⁶⁷ Furthermore, the great majority of assize misdemeanour or 'trespass' files have been lost; information is therefore restricted to criminal matters. But despite their many deficiencies, the assize files can be used, in conjunction with other sources, to build up a useful picture of the pattern of prosecution, a pattern which provides the starting point for looking at the way in which the system of criminal justice operated in the unstable and unpredictable conditions of revolutionary England.

The volume of criminal work transacted at York assizes is shown in Table 2.2 (meetings of the court for which the records are lost or incomplete have not been included in the table). The numbers tried by the court fluctuated markedly from meeting to meeting, but there is a broad impression of heavier calendars in the late 1640s and early 1650s. The high point was reached

67. PRO, ASSI 45/1/2-5/7 are the depositions for the period 1640-1660. The relevant indictments for this period (which are unsorted and in poor physical condition) are in ASSI 44/1-19. Gaol calendars, which are in ASSI 47/20/6, survive for the following meetings of the court (L. = Lent; S. = Summer): L.1641, S.1646, L.1647, S.1647, L.1649, S.1650, L.1651, S.1651, L.1652, L.1656, S.1657. A gaol book, ASSI 42/1, covers the period 1658-1673.

Table 2.2
Persons tried at selected assizes, 1641-1686.

L. = Lent
S. = Summer

L. 1641	71	L. 1663	56
		S. 1663	22
		L. 1664	41
S. 1646	68	S. 1664	24
L. 1647	88	L. 1665	33
S. 1647	67	S. 1665	28
L. 1648	96	L. 1666	44
S. 1648	34	S. 1666	28
L. 1649	67	L. 1667	31
S. 1649	91	S. 1667	30
L. 1650	74	L. 1668	26
S. 1650	73	S. 1668	14
L. 1651	73	L. 1669	30
S. 1651	66	S. 1669	14
L. 1652	62	L. 1670	25
		S. 1670	13
S. 1655	35	L. 1671	16
L. 1656	43	S. 1671	14
S. 1656	41	L. 1672	19
L. 1657	37	S. 1672	20
S. 1657	29	L. 1673	12
L. 1658	56		
S. 1658	18	L. 1677	40
S. 1659	39		
L. 1660	22	L. 1680	31
S. 1660	45	S. 1680	29
L. 1661	40	S. 1681	18
S. 1661	38	S. 1685	24
L. 1662	59	L. 1686	28
S. 1662	19	S. 1686	13

- NOTES:**
1. Assizes held at the Guildhall (York City) and Hull have not been included.
 2. A special assize held in January 1662 to punish Republican rebels has not been included.
 3. Only persons actually tried have been included. Because of inconsistencies in the way they were recorded, those freed by proclamation, found *ignoramus*, or *extra in felony* (at large) have been excluded from the count.
 4. Assizes for which the records are lost or incomplete have been excluded.
 5. The figures refer to criminal pleas only. Civil cases have not been included owing to the uneven survival of misdemeanour or 'trespass' files.

SOURCE: PRO, ASSI 44/1-8, 19; 47/20/6; 42/1.

in 1648 when ninety-six men and women were arraigned at the Lent sitting. By the mid 1650s calendars were shortening: at the Summer 1655 assizes there were only thirty-five prisoners. After the Restoration, in spite of occasional heavy calendars (for example, in Lent 1662 and Lent 1663), the trend was downwards, and by the early 1670s the numbers were three to five times lower than those for the Interregnum.

Because the figures in Table 2.2 are partially derived from a gaol book it has not been possible to break down the totals by category of crime.⁶⁸ Surviving indictments and calendars, however, show that criminal business consisted of a staple diet of larceny (in one form or another) and homicide, with intermittent prosecutions for counterfeiting, treasonable words, witchcraft and rape. (In subsequent chapters there will be more detailed discussion of the nature of assize cases.)

Table 2.3 outlines the level of prosecutions brought before West Riding quarter sessions between 1638 and 1665, and because the figures have been computed from indictment books it has been possible to break down the totals to give an impression of the nature as well as the volume of the court's work. (Later chapters will focus on the serious offences

68. The gaol book carries the prisoners' names, and the disposition of the cases heard by the court. Except for prisoners listed under *ignoramus* or *extra in felony* (at large) no details are given of the charges for which they were arraigned.

TABLE 2.3:
Persons accused at West Riding quarter sessions,
1638-1665

	Offences against property	Offences against the person	Riot and popular disturbance	Economic/poor Law offences	Sexual/moral/relig- ious offences	Nuisances/community offences	Offences relating to the administration of justice	Miscellaneous	TOTAL
1638	249	75	39	53	2	7	12	0	437
1639	100	65	35	7	1	10	18	2	238
1640	96	103	49	12	12	16	16	0	304
1641	82	122	78	14	153	13	6	0	468
1642	72	97	67	3	3	3	9	1	255
1647	68	62	120	16	4	4	14	0	288
1648	46	49	51	10	0	0	6	0	162
1649	145	98	150	66	0	5	13	0	477
1650	93	83	165	17	2	12	49	0	421
1651	75	107	80	26	2	4	13	0	307
1652	64	92	217	13	15	22	46	0	469
1653	84	74	136	17	16	15	24	5	371
1654	48	87	124	20	11	21	23	0	334
1655	34	62	111	21	8	29	25	7	297
1656	69	99	209	28	30	24	35	0	494
1657	80	92	136	23	6	7	45	0	389
1658	115	79	127	12	14	1	48	1	397
1659	74	65	90	11	4	10	33	2	289
1660	68	32	37	7	2	6	24	0	176
1661	94	76	97	25	0	17	35	2	346
1662	77	77	116	23	28	17	36	6	380
1663	68	56	166	31	58	10	13	2	404
1664	46	77	64	25	44	9	37	0	302
1665	64	52	77	10	93	9	27	2	334
TOTAL	2011	1881	2541	490	508	271	607	30	8339
%	24.1	22.6	30.5	5.9	6.1	3.2	7.3	0.4	(100.1)

Notes and Source to Table 2.3

- NOTES: 1. Bills marked *ignoramus* have not been included.
2. Persons appearing in more than one category have been counted once for each category. Thus a prisoner accused at the same sessions of sheep stealing and assault will be counted in the column *Offences against property* and the column *Offences against the person*.
3. No files have survived from 1645 up to and including Epiphany 1647.

SOURCE: WYRO, QS 4/1-8.

tried and discuss them in more detail.)

As far as the volume of quarter sessions work is concerned there does not appear to be anything like the pattern reflected in the assize figures. Annual totals throughout the period fluctuated between c.250 and c.500. There are, however, some interesting movements in respect of certain offences: for example, there was an unusually large number of persons indicted for property crimes in 1638, and again in 1649 (the latter coinciding with the heaviest assize calendar of the period). Similarly, there were more people tried for riots and public disturbances after the Civil War than in the later 1630s and early 1640s.

Again, these and other patterns will be explored at greater length as the thesis unfolds. But there is one point that requires immediate attention. The central question that arises from any observation on

the pattern of prosecution concerns the relationship between recorded crime and the character and incidence of 'real' crime. There are two difficulties here, the first of which derives from the nature of the sources. Cockburn has demonstrated that in crucial respects the details carried by the indictment are misleading. His conclusions are well known, and need not be rehearsed at length, save to say that his most telling points refer to two specific 'fields' of information: the accused's domicile (often made to 'fit' the parish in which the offence originated), and the accused's status (rendered uncertain by the clerks' near-indiscriminate use of the 'addition' labourer to describe male prisoners below the rank of gentleman).⁶⁹ Further doubts about the indictment's accuracy spring up when they are compared to other legal records: for example, when matched with recognisances and depositions the dating of the offence becomes suspect.⁷⁰ And because of the considerable powers of discretion exercised by the

69. A statute of 1413, 1 Henry V, c. 5, required that clerks enter the accused's occupation or 'addition' on the indictment.

70. 'Early-modern assize records as historical evidence' and 'Trial by the book? Fact and theory in the criminal process, 1558-1625'. Comparisons of the data contained in indictments and depositions relating to the same incident often reveal discrepancies of the kind alluded to by Cockburn (see, for example, the papers in the case of John Harrison who was alleged to have stolen 2s6d in Selby. He is described as 'of Selby' on the indictment, and from Haughton in Durham in the depositions: PRO, ASSI 44/5 (Lent 1654); 45/4/3/50-51. Similarly, Thomas Hansome is described on his indictment as a labourer, and on the depositions as a carpenter: ASSI 44/3 (Lent 1650); 45/3/1/82-83). Comparisons of indictments and depositions also show up discrepancies in the dating of the

victim (prosecution being in this period an almost entirely personal affair) the nature of the offence suggested by the wording on the indictment is not necessarily an exact description of the crime itself: if he or she so chose, the victim could tailor the complaint in order to scale-up or scale-down its seriousness: for example from simple to aggravated larceny, or from assault to rape, and *vice versa* in both cases." The indictment, then, while carrying much information that is useful to the historian contains some that is unquestionably flawed.

However, its short-comings are, to a large extent, compensated for by the depositions. These are first-hand statements of prosecutors, witnesses and suspects, and although filtered through the justice's pen they are free from the clerks' dog-Latin formula which do so much to impair the indictment's value. And they have the added merit of having been taken within a day or two (sometimes an hour or two) of the offence, when witnesses' memories of the event were still fresh. The depositions thus make good many of the indictment's defects, and they constitute one of the study's major archival sources.

(n, 70 cont.)

offence: these could range from a single day to more than six weeks: for example, ASSI 44/5 (indictment of Jasper Mitchell, Summer 1653 and 45/4/3/75-76); 44/5 (indictment of John Mathew, Lent 1653) and 45/4/2/42-44.

71. See below, pp. 177-80, 322-27, for further discussion of the options available to prosecutors.

The second difficulty, exacerbated here by the quantitative deficiencies of the Yorkshire sources, stems from the interpretative problems surrounding the relationship between prosecution and incidence, the 'dark figure' conundrum.⁷² Do fluctuations in the volume of indictments placed before the courts reflect movements in the level of 'real' crime? Opinions differ, although few historians today would be comfortable with the contention that the amount of crime in the community can be precisely quantified simply by counting indictments. As Joanna Innes and John Styles recently put it:

'Long term changes in the volume of any sort of indictments are formidably difficult to interpret. The influences possibly at work changing the relationship between "real" levels of crime and levels of crime prosecuted are so numerous, and so resistant to measurement that it seems impossible to pronounce with any confidence on the meanings of the patterns observed.'⁷³

While the present study is not concerned to make generalisations about long-term changes in the nature and volume of crime, whether prosecuted or 'real', these interpretive problems are issues that cannot be

72. For the 'dark figure' see Cockburn, 'The nature and incidence of crime in England, 1559-1625', pp. 50-51.

73. 'The crime wave: Recent writing on crime and criminal justice in eighteenth-century England', pp. 389-90. Styles has also pointed out that because the numbers of indicted offences coming before the courts are so few 'considerable proportional changes in annual totals of indictments' could be affected by the decisions of a very small number of prosecutors: 'Eighteenth-century criminal records', cited in J.M. Beattie, *Crime and the courts in England, 1660-1800*, pp. 200-1.

ducked. Short-term fluctuations also require explanation. So what, broadly speaking, do the figures signify?

Some of the rises and falls do seem to be consistent with what is known from other sources about the state of order in the county in certain years: for example, a number of accounts make it clear that the immediate post-war period saw widespread lawlessness and disorder, and in this period there were (compared to the more settled 1650s and 1660s) large numbers of people tried for serious offences. The study's basic argument, one that will be expanded in the following chapters, is that there was a direct correlation between the two: the lengthy gaol calendars were symptomatic of more crime in the community.⁷⁴ It is not argued, however, that the statistics provide anything like a precise gauge of changes in the scale of law-breaking. At best they can only add to the impressionistic evidence. As Chapter Five shows, even

74. It must be acknowledged that the adoption of such a view implies that there was a chain of cause and effect - that the law enforcement system was essentially reacting to problems thrown up by more law-breaking in the community, rather than taking the initiative and embarking on a campaign to suppress crime (for example, by ordering widespread 'trawls' of suspected houses in search of incriminating evidence on which to base charges). Although local initiatives to promote higher standards of order were fairly common in this period, they were generally confined to petty offences - assault, drunkenness, swearing, sexual misconduct and so forth. Given the limited resources available to the early-modern system of communal peace keeping it seems doubtful whether any sudden sharp increases in totals of indictments for specific categories of serious crime could have been the result of policing initiatives.

homicide indictments (which some historians believe to be the most reliable index of incidence) cannot be trusted as providing an accurate measure.⁷⁵ Nor is it suggested that fluctuations in the level of recorded crime were simply due to movements in the level of 'real' crime. There were, as we shall see, other critical factors at work: including changes in the willingness and ability of victims to go to law, and in the capacity of the system of criminal justice to, operate efficiently.

IV

Crime figures, therefore, must be treated with great caution, even more so if the offences are petty ones. It should be emphasised that the definition of crime employed up to now has been one of 'serious' crime. This has been to avoid confusion, for the circumstances in which felonies and misdemeanours originated, the way in which they were prosecuted, their implications for all involved, and their eventual outcomes were so vastly and fundamentally dissimilar. However, this is not to say that petty offences cannot contribute to the study of crime and law enforcement. On the contrary, to ignore them, as J.A. Sharpe has pointed out, runs the risk of distorting the reality of early-modern policing, much of which was concerned with very minor infractions of the rules governing social, economic and

75. Below, pp. 175-86.

moral behaviour.⁷⁶ Any attempt to understand the functioning and priorities of early-modern law enforcement requires that we look at petty offences and how they were dealt with. The difficulty arises in finding a suitable context in which to do this. Clearly, a county like Yorkshire with more than a quarter of a million inhabitants, and with its enormous economic and social diversity, presents too large and clumsy a framework. Yet, if the boundaries are drawn too tight, around too small a community, it is unlikely that sufficient data worth analysis will be turned up. In order to overcome these problems the focus now shifts to Halifax.

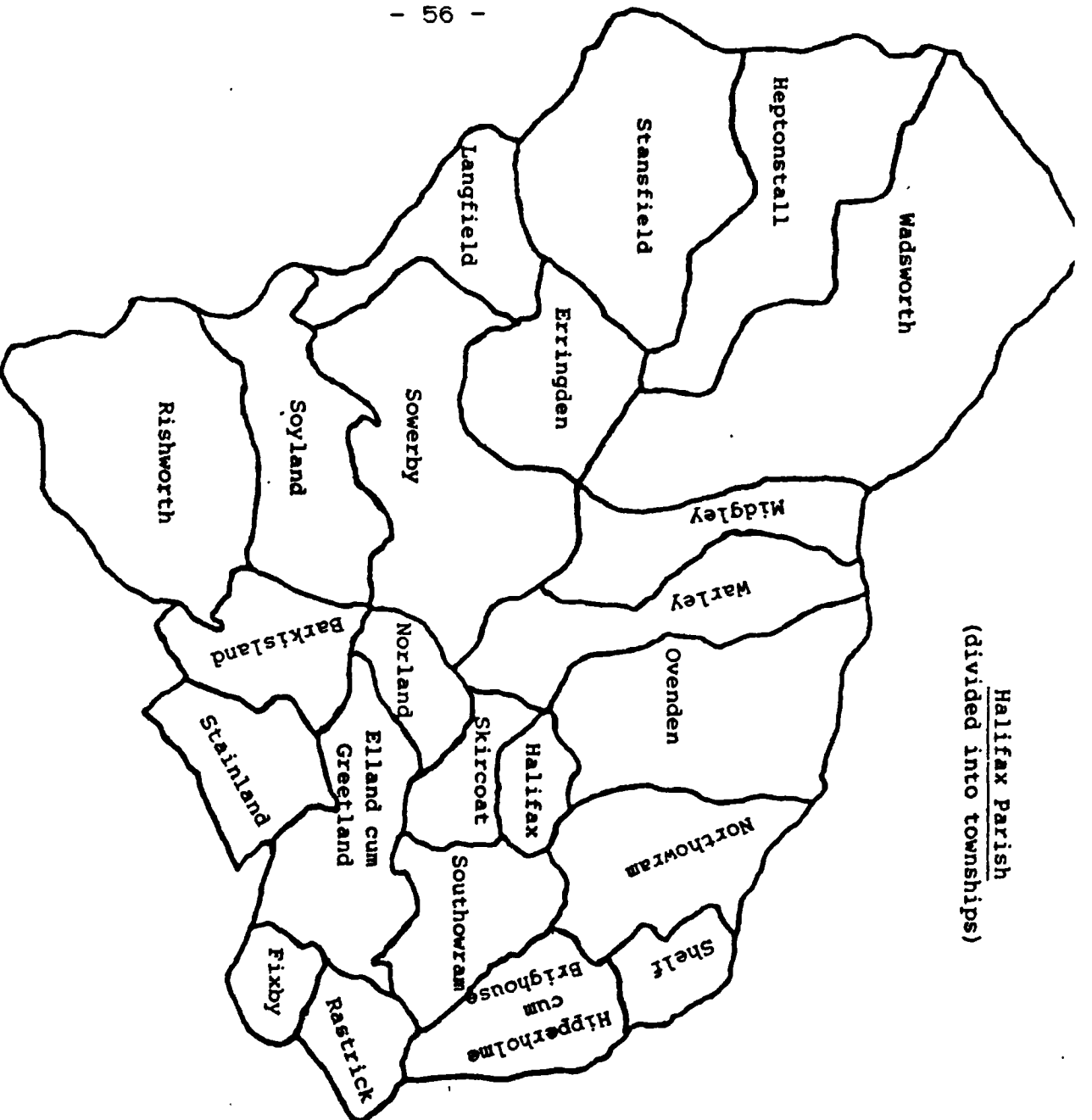
76. For two opposing views on working definitions of crime in the early-modern period see G.R. Elton, 'Crime and the historian', esp. pp. 2-4 and Sharpe, *Crime in early-modern England*, p. 5.

Chapter Three

Crime, order and authority in a Yorkshire parish: Halifax, 1620-1670

Halifax is not offered as a microcosm of Yorkshire; and no claim is made for it being wholly typical of Yorkshire parishes, even those which, like Halifax, felt growing urban and industrial influences. On the other hand, the basic organisation of law enforcement and the tensions it created can be recognised as those operating in many different communities. While Halifax's experience is inevitably in some senses unique, elements of it were replicated elsewhere, and with its rich local archives, it serves as an excellent context in which to look at early-modern local policing. As will become clear, 'serious' crime (that is, of course, recorded crime) was comparatively rare in the parish. What counted with the Halifax authorities were the more frequently occurring (and prosecuted) petty offences and, above all, the means by which these were controlled. For, in an era in which the institutions of local government existed at a relatively crude level, the machinery of crime control offered men a potential lever of power. This ensured that the interplay between crime, order and authority became highly important, and complex. To make sense of

Halifax Parish
(divided into townships)



The parochial district

Halifax
Sowerby
Miggley
Warley
Ovenden
Skircoat
Southowram
Northowram
Shelf
Hipperholme cum Brighouse

Elland chapelry

Elland cum Greetland
Rastrick
Fixby
Stainland
Norland
Barkisland
Soyland
Rishworth

Heptonstall chapelry

Heptonstall
Wadsworth
Stansfield
Langfield
Erringden

TABLE 3.1

Population estimates for Halifax parish, 1664, based on Gregroy King's multipliers

	1	2	3	4	5	6	7	8	9	10	11-20	TOTAL ¹	TOTAL ²
Number of hearths													
Number of households	2546	630	293	198	79	41	22	16	9	3	7	3844	3844
multiplier	3.7	4.0	4.2	4.5	4.8	5.2	5.7	6.5	7.5	9.5	14		4.75
Population	9420	2520	1231	891	379	213	125	104	67	28	98	15,076	18,259

SOURCE: PRO, E 179/210/393

this the study's time-span is extended to cover the period 1620 to 1670.

I

Straddling the high slopes of the 'great wastes and moors' of the Pennine Range, the parish of Halifax was renowned for its 'unusual extent and largeness'.¹ As big as the county of Rutland, at the death of Henry VIII something like 8,500 men, women and children lived there.² By 1664 the number of inhabitants had grown to between c.15,000 and c.18,000 (Table 3.1). This large population was said by James Ryther to 'surpas the rest in wisdom and wealth'.³ It was wealth overwhelmingly predicated on the textile industry. 'Populous and rich' Halifax, Clarendon observed, 'depend[ed] wholly upon clothiers'.⁴ Husbandry was peripheral to the parish economy. There were more men in Halifax, wrote Camden, 'than any kind of animal whatsoever'. He continued:

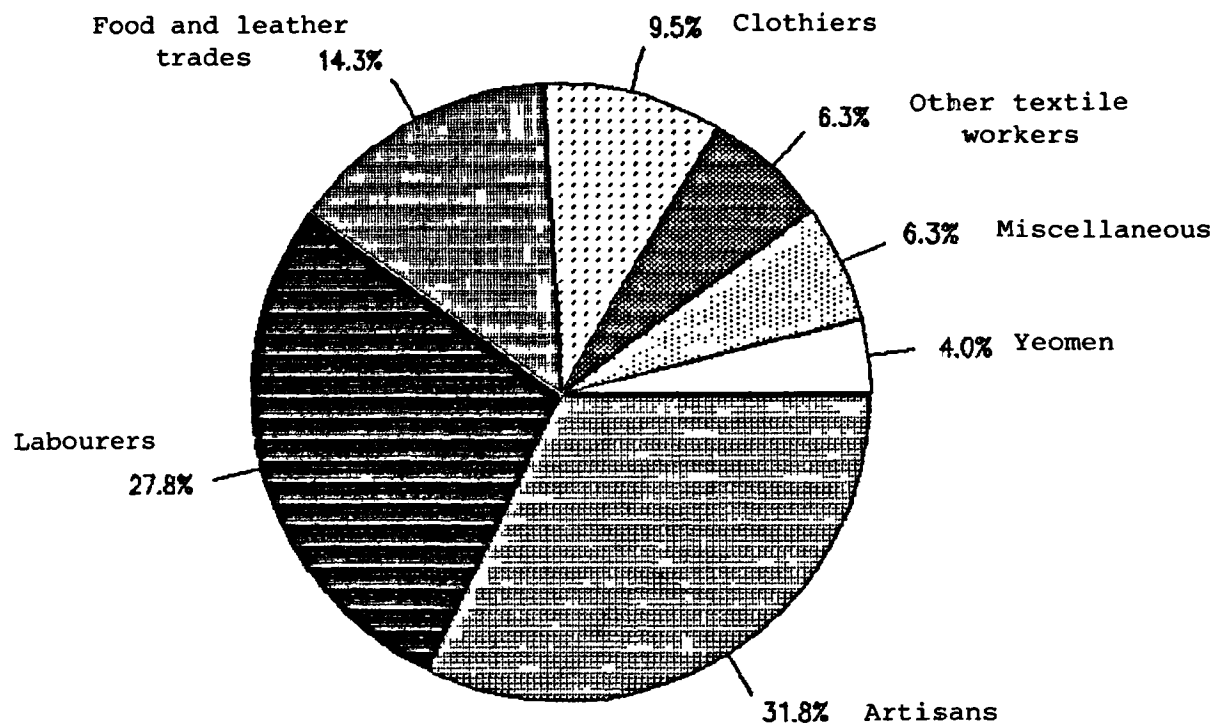
1. 2 & 3 Philip & Mary, c. 13; W. Camden, *Britannia*, vol. 2, ed. E. Gibson, pp. 707-8.
2. John Watson, *The history and antiquities of the parish of Halifax*, p. 1. In the 1630s JPs put the population at about 20,000. This may have been an over-estimate, however, in view of the 1664 figures (unless there had been some fall in population size over the period). The numbers subscribing to the Protestation in 1641-1642 also indicate a smaller population than the JPs' figures - c.18,000: M.J. Francois, 'The social and economic development of Halifax, 1558-1640', p. 226.
3. W.J Craig, 'James Ryther of Harewood and his letters to William Cecil, Lord Burghley', part 1, p. 110.
4. *The history of the Great Rebellion and Civil Wars in England*, ed. W.D. Macray, vol. 2, p. 465. Cf. J.C. Hodgson, *The journal of John Aston, 1639*, p. 30.

'Nothing is so admirable in this town, as the industry of the inhabitants, who, notwithstanding an unprofitable, barren soil, not fit to live in, have flourish'd by the Cloath trade ... they are both very rich, and have gain'd a reputation for it above their neighbours.'⁵

The advance of industry was most visible in Halifax town itself. In the fifteenth century the town was described as a 'few straggling tenements built of wood, wattles and thatch'; by 1600 it housed c.3,500 people.⁶ Its cloth halls, its many markets, shops and inns, its wide range of trades and services, and its occupational structure (Fig. 3.1), all point to an increasingly urban environment.⁷ This distinguished it from the twenty-four out-townships which, with their more scattered settlements, have remained predominantly rural to this day. But even here farming was less important than the cloth trade as a source of employment. The additions 'clothier', 'clothworker', 'clothdresser', and 'linen draper' account for two-thirds of the occupations given by out-township males on marriage between 1653 and 1658 (Fig. 3.2). Additions indicating agricultural occupations are comparatively rare: even if it is assumed that all labourers were farm labourers, less than a fifth of the sample were primarily engaged in husbandry. In seventeenth-century

5. *Britannia*, vol. 2, ed. Gibson, p. 708.
6. C. Sunderland, 'How Halifax developed', pp. 119, 123.
7. Alan Betteridge, 'Halifax before the Industrial Revolution', part 1, pp. 17-18; Steven Hughes, 'Church and society in the seventeenth-century parish of Halifax', pp. 17, 20.

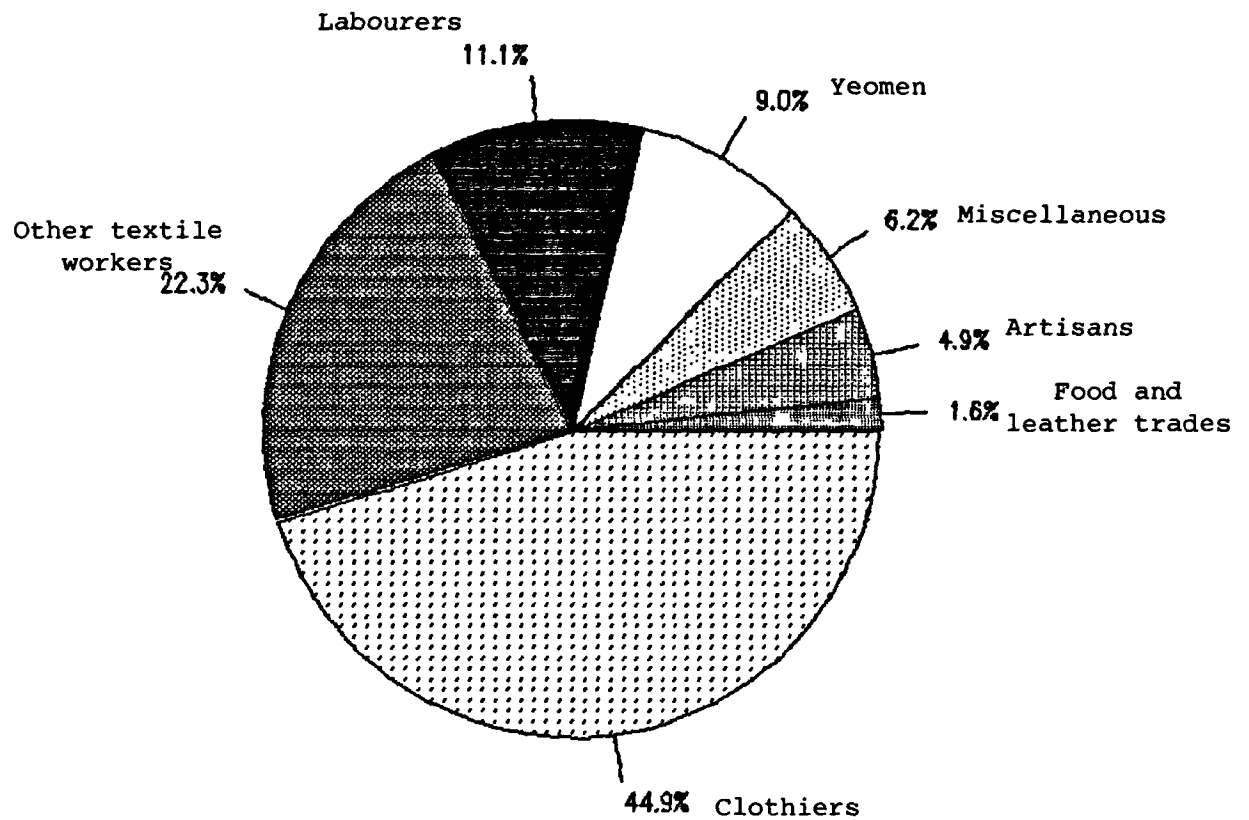
FIGURE 3.1
Occupational structure
Halifax town, 1653-1658



NOTE: The pie chart is based on 126 'additions' given by Halifax township males on marriage, 1653-1658.

SOURCE: WYRO, D 53/7

FIGURE 3.2
Occupational structure
Out-townships, 1653-1658



NOTE: The pie chart is based on 323 'additions' given by out-township males on marriage, 1653-1658.

SOURCE: WYRO, D 53/7

Halifax people made their living from cloth.

The observations of Ryther, Clarendon and Camden notwithstanding, that living was often meagre. The majority of Halifax clothiers, unlike their neighbours in Leeds, operated on a small scale. They led hand-to-mouth existences, most of them, making one kersey in a week and using the income from its sale to buy material for the next week's work. This put them at the mercy of the vagaries of trading conditions, subject as they were to periodic depression.* This, and the retarded agriculture, ensured that underemployment, unemployment and poverty were persistent problems. Hearth tax returns illustrate their depth and extent (Table 3.2). In 1664 slightly more than a third of all households (1,319) were exempted from payment on grounds of poverty; another 31.9% (1,227) were assessed for only one hearth, signifying that they occupied an extremely precarious economic position.

Pauperism was not uniformly distributed (Table 3.3). The heaviest concentration was in the five townships of Heptonstall chapelry: here the destitute and labouring poor comprised three-quarters of the population (28.0% exempted, 49.5% in one-hearthed

8. In 1664 20.8% of the men described as clothiers in the marriage register, 1653-1658, were exempted from the hearth tax on grounds of poverty. A further 40.4% were taxed for one hearth, and 22.2% for two (sample = 72): PRO, E.179/210/393; WYRO, D 53/7. It was in recognition of the prevalence of small-scale producers in the parish that the famous 'Halifax Act' was passed. This gave local clothiers statutory exemption from certain regulations governing the cloth trade: 2 & 3 Philip and Mary, c. 13.

TABLE 3.2
House size in selected townships based on
1664 hearth tax returns

social category	house size	Halifax N %	Hipparholme cum Brighthouse N %	Southowram N %	Sowerby- Soyland N %	Heptonstall N %	Stansfield N %	Stainland N %	Shelf N %
A	6+	35 7.2	5 2.5	4 2.7	5 1.1	2 1.2	3 1.4	-	1 1.2
B	3-5	115 22.9	48 24.1	31 21.0	66 14.1	9 5.6	10 4.7	11 9.2	14 16.9
C	2	75 14.9	36 18.1	32 21.6	72 15.4	19 11.9	23 10.9	17 14.3	11 13.3
D	1	67 13.3	43 21.6	27 18.2	185 39.5	70 43.7	112 53.1	56 47.1	28 33.7
E	exempt	209 41.7	67 33.7	54 36.5	140 29.9	60 37.6	63 29.9	35 29.4	29 34.9

SOURCE: PRO, E.179/210/393

TABLE 3.3
House size in the parochial district and
chapelries based on 1644 hearth tax returns

social category	house size	parochial district N %	Heptonstall chapelry N %	Elland chapelry N %	parish N %
A	6+	71 2.9	8 1.2	19 2.7	98 2.6
B	3-5	424 17.1	52 7.6	94 13.7	570 14.8
C	2	414 16.7	94 13.7	122 17.8	630 16.4
D	1	654 26.5	340 49.5	233 34.1	1227 31.9
E	exempt	909 36.8	193 28.0	217 31.7	1319 34.3

SOURCE: PRO, E.179/210/393

houses), and in one township, Stansfield, they made up 83% of the households. For some of these people poverty, at least as measured in terms of exemption from the hearth tax or eligibility for relief, was short-term. But many of Halifax's poor were part of a pauper class, locked into life-long destitution. A quarter of those exempted from the 1672 hearth tax in Halifax township had been in the same position in 1664.⁹ Some of them, as the Brian Crowther Charity account book shows, had been receiving outdoor relief for up to a decade.¹⁰ The account book's marginal notes confirm the impression of the existence of a pauper class: it is possible to trace over extended periods the doles handed out to individual families. The accounts also supplement the hearth tax's dry statistics to provide revealing glimpses into the plight of the poor: in one such note the Charity's feofees recorded in 1658, 'Samuel Pickls died starved'.¹¹

If for most producers the cloth trade provided at best a brittle means to make ends meet, it enabled others to acquire substantial fortunes. Halifax boasted some very wealthy families. But it was wealth thinly

9. PRO, E 179/349 and 179/210/393. At least thirty-one of the 141 exempt in 1672 had been in the same position in 1664.
10. For example, John Tyer's wife who received 4d from the Charity in 1654 and ten years later was exempt from the hearth tax: CDA, HAS/B:12/1, 1654; PRO, E.179/210/393, m. 54v.
11. CDA, HAS/B:12/1, 'poor dead' 1658.

TABLE 3.4
House size and occupational status (parish)

social group	house size	number in parish	% of total in parish	occupants
'A'	more than 5 hearths	98	2.6	gentry; yeomen; wealthy clothiers
'B'	3 to 5 hearths	570	14.8	yeomen; clothiers; wealthy retailers, artisans and 'professionals'
'C'	2 hearth	630	16.4	independent, out-township clothiers; husbandmen; artisans; shopkeepers
'D'	1 hearth	1227	31.9	small clothiers; clothworkers; clothdressers; poor artisans; labourers; colliers
'E'	exempt	1319	34.3	the destitute poor

NOTE: For many Halifax people a single occupational designation is anachronistic: the terms 'yeoman' and 'clothier' were frequently interchanged. This analysis is derived from matching the 1664 hearth tax returns with 449 occupational designations of men resident in the parish on marriage and recorded in the parish register between 1653 and 1658. Unambiguous correlation was made in 186 cases. When considering the value of such an exercise the smallness of the sample must be kept in mind. Allowance must also be made for wishful thinking on the part of grooms (a day labourer, for example, may have passed himself off as an artisan), and for the fact that several years (for many) or a whole decade (for some) elapsed between marriage and assessment for the hearth tax, with the possibility that there was some movement up or down the social scale. At best, therefore, the table is a rough guide to the relationship between house size and occupational status. However, there is a clear overlap between wealth as indicated by the hearth tax returns and the status suggested by the occupations given on marriage. None of the twenty-three labourers in the sample, for example, occupied houses with more than two hearths (52.1% were exempt; 26.1% lived in one-hearthed homes). All artisans and retailers lived in houses with one to five hearths. The seventy-two clothiers ranged between exempt (20.8%) to houses with six hearths.

SOURCES: PRO, E.179/210/393; WYRO, D 53/7.

and unevenly spread. As the hearth tax returns show, there were only ninety-eight families occupying houses with more than five hearths, and they accounted for 2.6% of all households (Table 3.4). More than a third of these, as might be expected, lived within Halifax town itself, and nearly three-quarters lived within the boundaries of the parochial district. In contrast, only eight lived in poverty-stricken Heptonstall chapelry where they formed a little more than 1% of the population.

Table 3.4 shows that the occupants of these large houses (designated for convenience as *social group 'A'*) were gentry, yeomen and wealthy clothiers. The richest combined interests in land, cloth and urban property. Jeremy Bentley and Nathaniel Waterhouse, leading figures during this period, were two of this type. At the time of his death in 1665 Bentley, who in 1654 became Halifax's first M.P., was estimated to have been worth £20,000.¹²

Below this privileged élite was a somewhat larger group possessed of more modest means (*social group 'B'*). There were 570 families domiciled in houses with three to five hearths (14.8%). They were largely yeomen, medium-sized clothiers, larger retailers, well-to-do artisans and a sprinkling of 'professional men' (scriveners, attorneys, apothecaries, physicians).

12. Heywood, *Diaries*, vol. 2, p. 90; T.W. Hanson, 'Nathaniel Waterhouse, great Halifax benefactor', and 'Jeremy Bentley, first MP for Halifax'.

In the third group (*social group 'C'*) were 630 families (16.4%) occupying houses with two hearths. By and large, this group consisted of independent, out-township clothiers, smallholders, and poorer artisans and tradesmen. They were much humbler than those in the two preceding groups, and their edge on the labouring poor and destitute (*social groups 'D' and 'E'*) was at best slight: a sudden change in circumstances, such as a bout of illness for the breadwinner or the birth of another child, could topple them into the lower groups.

Although Halifax's 'better sort' were relatively few in number, during the early and middle decades of the seventeenth century they were growing in self-confidence and status. A key development here, beginning around 1607, was the surrender of copyholds by wealthier tenants of the sub-manor of Halifax and their enfranchisement as freeholders. Among the newly-enfranchised freeholders were men who in later years were to play prominent roles in parish administration: for example, Simeon Binnes, clothier, and Robert Exley, mercer, who in 1635 became governors of the Halifax workhouse.¹³

13. Binnes paid a conson of £160 in 1609 for several messuages, closes and crofts; Exley, in the same year, surrendered his copyhold and paid a conson of £94 for messuages, tenements, a horse mill, a smithy and numerous closes: LCA, TM/HX/A/127, 104c; DB 206/1, 148/8, 213/30. Sir Arthur Ingram, lord of the sub-manor of Halifax, encouraged this process with an eye to maximising profits: A.F. Upton, *Sir Arthur Ingram*, pp. 45, 48-51, 183, 191. Cf. M.J. Ellis, 'A study in the manorial history of Halifax in the sixteenth and seventeenth centuries', parts 1 and 2; Betteridge, 'Halifax before the Industrial Revolution', part 1, p. 22,

A second development was the spread of the new religion which took an early hold on Halifax's 'better sort'. The parish quickly became famous for its attachment to an aggressive Protestantism.¹⁴ Under the guidance of robustly Calvinist vicars and lecturers this developed into a Puritanism that, in the 1630s, attracted the attention of the Laudian archbishop of York, Richard Neile.¹⁵

John Favour, vicar from 1593 to 1623, was Halifax's most influential divine.¹⁶ Favour encouraged his richer parishioners to take a close interest in the ordering of parish affairs, stimulating a strong sense of civic duty. The better-off members of his flock

(n.13 cont.)

and 'A study of Halifax administrative records, 1585-1762', p. 24. The Halifax workhouse is discussed below, pp. 95-107.

14. A.G. Dickens, *Protestants and Lollards in the diocese of York*, p. 14; Francois, 'The social and economic development of Halifax', p. 271.
15. According to R.A. Marchant, Halifax 'was a notorious "black spot" for disobedience to the the church courts': *The church under the law*, p. 207. Although Neile's puritan opponents had a strong foothold in the parish they were far from dominating it: Halifax's Protestantism was not monolithic. The sheer size of the parish, with its numerous chapels, gave parishioners a range of choice in the ministers they patronised. This was at its most evident during the Interregnum when Episcopalian, Presbyterian and Independent clergymen vied with each other, and with Halifax's Quakers, in gathering their congregations: T.W. Hanson, 'Halifax exercises', and 'Halifax parish church, 1640-1660', parts 1 and 2; CDA, N/PAR 15.
16. Christopher Hill has described Favour as 'the great Calvinist preacher': *Society and puritanism*, p. 134. Cf. Betteridge, 'Halifax before the Industrial Revolution', part 2, p. 82; T.W. Hanson, 'Antiquity triumphing over noveltie', and 'Dr. Favour as Protestant disputant'.

prided themselves on their support for the grammar school, founded by royal patent in 1600, for private charities and missionary work, and participation in local government."

In early seventeenth-century Halifax there occurred something very similar to what Keith Wrightson and David Levine have described in Terling: the rise of a self-conscious, educated, godly élite."

The Halifax élite was also ambitious. Like its Terling counterpart it was very much concerned with what it saw as the threat to order and the social fabric stemming from the unruly 'baser sort'; concerned, in other words, with social discipline. But the élite, or rather a section of it, also entertained political aspirations that were to bring it into conflict with existing power-bases.

II

Halifax may have been developing into an industrial and urban centre, but administration was still rooted in manorialism. True, local government was the shared

17. Francois, 'The social and economic development of Halifax', p. 275. Cf. M.W. Garside, 'Halifax schools prior to 1700'; Betteridge, 'Halifax before the Industrial Revolution', part 2, pp. 82-83, 87-88; CDA, 'OLP' 33, 38.
18. *Poverty and piety in an English village: Terling, 1525-1700*, esp. chs. 4-7. Cf. Margaret Spufford, *Contrasting communities*, esp. pp. 28-45.

responsibility of the church, the magistracy and the manor. But until the middle of the seventeenth century it was the manor that was the dominant institution.

Halifax's manorial structure was a complex affair. There was a number of small sub-manors, but by the early 1600s these had lost most of their force.¹⁹ By 1620 the manor of Wakefield was the real seat of power. Part of the Duchy of Lancaster between 1554 and 1629, the manor had passed briefly to the Earl of Holland, and subsequently to Sir Gervase Clifton, a Nottinghamshire baronet who retained ownership for most of the period under review.²⁰

Twenty-two of Halifax's twenty-five townships came within the manor's jurisdiction.²¹ In addition to possessing an active court leet (which will be considered below), the manor had the unique Halifax gibbet law.²² This conferred something like the

19. The sub-manor of Halifax, for example, had leet jurisdiction, but by the mid seventeenth century this had fallen into decay: Betteridge, 'Halifax before the Industrial Revolution', part 1, p. 22.

20. J. Walker, *Wakefield: Its history and people*, passim; *Wakefield manor book*, ed. J. Charlesworth, pp. 53-54; *The court rolls of the manor of Wakefield*, ed. C.M. Fraser and K. Emsley, vol. 1, pp. ix-xxvii.

21. Halifax, Sowerby, Warley, Ovenden, Hipperholme cum Brighouse, Skircoat, Midgley, Shelf, Barkisland, Fixby, Worland, Rishworth, Rastrick, Soyland, Stainland, Heptonstall, Erringden, Langfield, Stansfield, Wadsworth and Northowram. The other three were part of the Honour of Pontefract: Ellis, 'A study in the manorial history of Halifax parish', part 1.

22. In 1639 the gibbet itself was described by John Aston: 'a heading blocke ... a little out of towne westward: it is raised upon a little forced ascent of some halfe a dozen

medieval rights of 'infangthief' and 'outfangthief'. Not every township was covered by the gibbet law, but in those that were, thieves caught with goods worth more than 13⁴d, and taken 'habhabend', 'backberand', or 'confessand', were liable to execution by beheading.²³

Between 1540 and 1650 fifty-six men and women are known to have been beheaded.²⁴ But the symbolism of the gibbet was probably more significant than the number of lives it claimed. The public executions carried out under the aegis of the lord's bailiff must have been a potent reminder not just of the immediacy and awfulness

(n, 22 cont.)

steps and is made in forme of a narrow gallows, having two ribbs downe either side post, and a great waughtie block ... in the bottome of which ... is fastened a keene edged hatchet; then the block is drawne up by a pulley and a cord to the crosse on the topp and the malefactor layes his head on the block below; then they let runne the stock with the hatchet in, and dispatch him immediately': Hodgson, *The Journal of John Aston*, p. 30.

23. Halifax, Sowerby, Skircoat, Ovenden, Warley and Midgley were covered by the gibbet law; possibly also Rishworth, Erringden, Heptonstall, Stansfield and Langfield: Ellis, 'A study in the manorial history of Halifax parish', part 2, pp. 435-37. No convincing explanation has been forwarded as to why this feudal relic survived in Halifax and not elsewhere. Early accounts attributed it to the need to protect Halifax's clothiers from thieves and to the difficulty of getting to York to prosecute at assizes, not problems exclusive to the parish. Almost all accounts of the gibbet have been based on BL, Harleian MSS, 785 and Brearcliffe's MSS (CDA, MISC:182). Cf. Samuel Midgley, *Halifax and its gibbet law placed in a true light*; J.F. Stephen, *A history of the criminal law of England*, vol. 1, pp. 265-69; Edward Armitage, 'Halifax gibbet law'; J. Lister, 'Halifax gibbet law'; E.W. Crossley, 'A Halifax gibbeting'; T.W. Hanson, 'The gibbet law book', and 'The Halifax gibbet custom'.

24. Armitage, 'Halifax gibbet law'.

of retribution, but also of the continuing authority of manorialism.

A less dramatic reminder, but no less powerful for being so, was the leet. This made up in quantity what it lacked in the way of drama (by comparison with the gibbet). It was, as Table 3.5 shows, an extremely active policing body, responsible for presenting and punishing many more offenders than either the common law or ecclesiastical courts (Tables 3.6-3.8).

It was the authority of the manor, representing a conservative, almost feudal, configuration of power, which growing urbanisation was rendering ever more anachronistic, and around which the story of the middle decades of the seventeenth century revolves. An increasingly dissatisfied section of the Halifax urban élite initiated a power struggle in an attempt to elbow aside the manor. Control over the machinery of law enforcement was the principal arena in which this struggle was fought out.

There were, however, given the tripartite structure of local government, other interested parties. First, there was the magistracy. JPs were not thin on the ground in Halifax.²⁵ With the exception of

25. Before the Civil War there were three resident magistrates: Thomas Thornhill of Fixby, Abraham Sunderland of High Sunderland and John Farrer of Midgley: PRO, C.231/5, f. 439; E.179/209/363, 377 (Fixby and Midgley); J. Lister, *West Riding quarter sessions records*, pp. 27n, 93, 95, 130, 231, 328, 383. In addition, the vicar of Halifax was normally a member of the West Riding commission of the peace: C.193/13/2; C.231/5, ff. 176, 311. Following the Civil War William Farrer of Ewood, John Lumme of Northowram, Joshua

TABLE 3.5
Persons presented to the Halifax and Brighthouse courts leet (selected townships),
1620-1670

	Assault	Drink offences	Road/bridge default	Road/bridge obstruction	water supply pollution	water supply diversion	Keeping inmates	Cottage building	Economic offences	Miscellaneous	TOTAL	% of all offences, 1620-1670
1620-24	65	0	19	8	86	6	2	11	21	24	242	9.1
1625-29	161	4	57	16	103	6	1	0	2	14	364	13.7
1630-34	453	0	43	7	94	5	0	1	1	10	614	23.1
1635-39	550	0	46	13	59	6	23	2	4	47	750	28.3
1640-44	166	0	27	7	5	6	0	0	0	1	212	8.0
1645-49	11	0	5	0	0	0	0	0	0	8	24	0.9
1650-54	4	0	12	2	4	0	0	0	2	16	40	1.5
1655-59	58	0	20	14	10	12	0	0		13	156	5.9
1660-64	54	1	28	2	11	1	0	0	17	4	118	4.4
1665-69	28	0	65	2	3	8	0	0	21	4	131	4.9
1670	2	0	0	0	0	0	0	0	2	0	4	0.2
TOTAL	1552	5	322	71	375	50	26	14	99	141	2655	100.0%
%	58.5	0.2	12.1	2.7	14.1	1.9	1.0	0.5	3.7	5.3	100.0	

NOTES: 1. The roll for 1664-1665 was unavailable for use.

2. The figures are derived from sampling: they do not represent the total number of cases heard by the leet. The presentments of the Halifax leet jury, and the presentments of Halifax, Sowerby, Midgley, Heptonstall and Shelf townships were used.

SOURCE: YAS, MD 225/1 (1620-1670)

TABLE 3.6
Persons prosecuted at West Riding quarter sessions for offences
committed in Halifax parish, 1638-1670

	Simple larceny	Aggravated larceny	Assault	Riot	Forcible disseisin	Sexual/moral offences	Drink offences	Inmates	Cottage building	Economic offences	Miscellaneous	TOTAL
1638-1639	25	0	28	0	0	0	0	0	0	1	0	54
1640-1644	13	0	32	0	15	0	0	0	0	0	2	62
1645-1649	5	0	9	0	10	0	0	0	0	46	3	73
1650-1654	11	4	18	15	30	4	0	2	0	6	12	102
1655-1659	19	2	10	19	24	7	1	0	2	1	12	97
1660-1664	10	0	22	10	9	0	0	0	0	0	2	53
1665-1669	22	1	17	5	11	0	58	0	0	56	11	181
1670	1	0	1	5	10	0	0	0	0	0	3	20
TOTAL	106	7	137	54	109	11	59	2	2	110	45	642
%	16.5	1.1	21.3	8.4	17.0	1.7	9.2	0.3	0.3	17.1	7.0	99.9

NOTES: 1. No courts were held after summer 1642 until 1644 or 1645. The first post-war court for which records survive met at Easter 1647.
2. Persons indicted for more than one offence have been counted once for every category of offence committed.

SOURCE: WYRO, QS 4/1-4/9.

TABLE 3.7
Persons prosecuted at York assizes for offences
committed in Halifax parish, 1641-1670

	Simple larceny	Aggravated larceny	Clipping/ coining	Homicide	Assault	Riot	Forcible disseisin	Sexual/moral offences	Drink offences	Cottage building	Economic offences	Miscellaneous	TOTAL
1641-1644	1	0	0	3	0	0	0	0	0	0	0	0	4
1645-1649	3	1	6	4	0	0	0	1	0	0	0	3	18
1650-1654	3	0	1	2	2	0	0	1	0	0	5	2	16
1655-1659	2	25	0	4	11	31	0	3	1	5	0	0	82
1660-1664	5	3	0	1	0	10	0	0	0	0	0	3	22
1665-1669	11	0	1	1	3	18	3	0	0	0	0	70	107
1670	0	1	0	0	0	0	0	0	0	0	0	0	1
TOTAL	25	30	8	15	16	59	3	5	1	5	5	78	250
%	10.0	12.0	3.2	6.0	6.4	23.6	1.2	2.0	0.4	2.0	2.0	31.2	100.0

NOTES: 1. The assize records do not form a continuous series. The figures presented here are therefore an under-estimate of the numbers prosecuted.
2. Persons indicted for more than one offence have been counted once for every category of offence committed.

SOURCE: PRO, ASSI 44/1-8, 19, 42/1, 47/20/6.

TABLE 3.8
Persons cited at visitations for offences committed
in Halifax parish, 1627-1667

	Absence from church	Bridal pregnancy	Sexual incontinence	Ill rule on the sabbath	Allowing ill rule on the sabbath	Drunkenness	Standing excommunicate	Failure to pay church rate	Quakers	Miscellaneous	TOTAL	% of all presentments
1627	3	8	73	33	3	3	3	0	0	34	160	15.4
1633	24	17	59	10	5	1	0	2	0	56	174	16.8
1636	52	56	151	16	35	1	12	13	0	16	352	33.9
1640	0	16	2	0	0	0	0	0	0	1	19	1.8
1662-3	27	4	20	2	1	0	0	8	29	19	110	10.6
1667	22	8	76	10	3	0	52	5	24	23	223	21.5
TOTAL	128	109	381	71	47	5	67	28	53	149	1038	100.0
%	12.3	10.5	36.7	6.8	4.5	0.5	6.5	2.7	5.1	14.4	100.0	

SOURCE: BIHR, V 1627/CB; V 1633/CB; V 1636/CB; V 1640/CB; V 1662-3/CB;
V 1667/CB.

the Civil War years and their immediate aftermath there were always at least three (and sometimes as many as five) active magistrates: approximately 1:3,000-5,000 of the population, a much higher ratio of JPs to populace than in most other areas of the West Riding.²⁶

Then there was the church. The informal influence of the clergy in local affairs was considerable, as those close to Favour testified. But the church also had extensive coercive power which it exercised through a variety of tribunals. Parishioners were periodically brought before the archdeacon's court to answer for their misdemeanours, although this tribunal was not as active in Halifax as it was elsewhere.²⁷ More commonly, those falling foul of the church were punished at visitations.

(n, 25 cont.,)

Horton of Sowerby and John Hodgson of Coley were added to the commission: Farrer was made a JP in February 1651: PRO, C.231/6, f. 210. It is unclear exactly when Horton was added to the commission of the peace. He first attended quarter sessions in July 1656: WYRO, QS 4/4, f. 216. Lumme was appointed in the mid 1650s: Q/1. The first evidence of Hodgson's judicial activity is in 1657: PRO, ASSI 45/5/4/45. There was also a number of non-resident JPs active in the parish: before the Civil War, John Kay of Woodsome near Huddersfield, and Sir William Savile of Thornhill; after the Civil War, Henry Tempest of Tong near Bradford was the most notable: PRO, C.231/5, f. 111v; C.193/13/3, 193/13/4; Lister, *West Riding quarter sessions records*, pp. 45n, 383; A. Gooder, *The parliamentary representation of the county of York*, pp. 71-72.

26. Below, pp. 126-27.

27. For example in early-seventeenth-century Kelvedon in Essex, studied by J.A. Sharpe, 'Crime and delinquency in an Essex parish, 1600-1640', p. 109, where the archdeacon's court was a highly active tribunal.

The jurisdictional boundaries between manor, magistracy and church were hazy. Broadly speaking, it would be true to say that JPs had sole jurisdiction over felonies and that the ecclesiastical authorities concerned themselves primarily with sexual misconduct, failure to observe the Sabbath and absence from church. However, they also took cognisance of swearing, drunkenness and disorderly alehouse-keeping: offences which also came within the purview of both JPs and the leet. In fact, it was the dividing line between the manor and the magistracy that was haziest. Infringements of Poor Law statutes, supervision of alehouses, the upkeep of roads and bridges, various economic offences and above all assaults were dealt with by both the leet and the JPs at quarter sessions, at petty sessions and informally.²⁸

Halifax, then, possessed rival jurisdictions. This was not necessarily antagonistic rivalry, but since the administration of justice conferred power, prestige and profit it is unlikely that law enforcement was without its clashes. As we shall see, the clearest evidence for this comes from the mid 1630s, and it concerned,

28. The absence of records relating to the work of justices at petty sessions further clouds the manner in which responsibility for crime control was divided. Stray references in constables' accounts show that JPs summarily ordered the whipping and stocking of vagrants, and, during the Interregnum, fined swearers and non-attenders at church. But otherwise there is little to indicate the scale or scope of their work: CDA, SPL:143 (accounts of Thomas Sunderland, entry dated January 13, 1657; accounts of Isaac Farrer, entries dated January 27, and July 23, 1658).

primarily, the position of the manor and the court leet. To understand why and how this came about it is necessary to look at the workings of the leet in more detail.

III

The leet's jurisdiction derived from the ancient franchise of return of writs and view of frankpledge. It met twice a year on consecutive days after Easter and Michaelmas: at Wakefield, Halifax, Brighouse and Kirkburton, and dealt exclusively with misdemeanours, most commonly assaults and affray.²⁹

The punishments at the leet's disposal theoretically included carting, stocking and whipping, but by the mid seventeenth century the standard penalty was financial. The fines levied ranged from a few pennies for contamination of the water supply to several pounds for persistent failure to repair roads or bridges.

Offenders were presented to the court, which was presided over by the High Steward or his deputy, by local presentment juries of sworn men. There was one presentment jury for each township or constabulary

29. The court's jurisdiction and procedures are summarised in *The court rolls of the manor of Wakefield*, vol. 1, eds. Fraser and Emsley, pp. ix-xxiii. Cf. *Wakefield manor book, 1709*, ed. Charlesworth.

TABLE 3.9
Sworn men and hearth tax returns, 1658-1670

MIDGLEY

<i>Social Group</i>	<i>n.</i>	<i>%</i>	<i>% of group in township</i>
'A'	0	0	2.1
'B'	3	12.5	14.7
'C'	3	12.5	15.8
'D'	13	54.2	41.1
'E'	5	20.8	26.3
TOTAL	24	100.0	100.0

HALIFAX

<i>Social Group</i>	<i>n.</i>	<i>%</i>	<i>% of group in township</i>
'A'	1	3.3	7.2
'B'	12	40.0	22.9
'C'	10	33.3	14.9
'D'	5	16.7	13.3
'E'	2	6.7	41.7
TOTAL	30	100.0	100.0

- NOTES: 1. 37 men served as sworn men for Midgley between 1658 and 1670. 13 could not be matched positively with hearth tax returns.
2. 48 men served as sworn men for Halifax township between 1658 and 1670. 18 could not be matched positively with hearth tax returns.

SOURCE: The names of the sworn men were taken from the paper drafts of the leet court rolls: YAS, MD 225/1/383/A-395/A. These were then matched with hearth tax returns: PRO, E.179/210/393, mm. 53v-55, 62v-63.

within the manor, generally consisting of four men acting with the constable.³⁰ Together they compiled lists or 'bills' of local offenders to give to the leet jury which determined culpability and fixed punishments.

30. The Halifax township jury was eight strong; others consisted of two men: *The court rolls of the manor of Wakefield*, eds. Fraser and Emsley, vol. 1, p. xviii.

It is not known how township sworn men were selected. A rota system seems to have operated in some townships at least.³¹ Sworn men, unlike other parish officers, were usually of middling or low social status, with rich men serving only on rare occasions. The sworn men of Midgley, for example, were drawn predominantly from *social groups 'D' and 'E'* (see Table 3.9). Sworn men from Halifax township also included paupers and labourers but on the whole were more well-to-do than their counterparts from Midgley, being drawn largely from groups *'B' and 'C'*; but they were still of lower social origins than other parish officers such as constables, churchwardens or overseers.³²

The inclusion of men from lower ranks shows that there was some popular participation in the regulation of community affairs. However, around 1626 a significant innovation occurred in the way the leet conducted its business. Before that date the bulk of those punished had been presented by the township sworn men. At the Michaelmas 1623 Halifax leet, for example, the sworn men made twenty-one of the twenty-six presentments; the leet jury made only five (a fifth of the total); by 1631 the positions were reversed. The leet jury made seventy-six of the eighty-one

31. *The court rolls of the manor of Wakefield*, eds. Fraser and Emsley, vol. 1, p. xviii.

32. See below, pp. 308-18, for a discussion of the social status of parish officers.

presentments (93.8%). Sworn men continued to meet and present their bills but they named fewer and fewer offenders. Responsibility was transferred to the leet jury; the sworn men were increasingly squeezed out of any real participation in the court's affairs.

There are two probable reasons for the decline of the township sworn men. The first was in the interests of efficiency. The sworn men would have been subject to considerable informal pressure from neighbours in drafting their lists, and because of their relatively low status they may also have been unable to withstand intimidation by landlords or other influential men. The temptation to turn an expedient or neighbourly blind eye would thus have been strong. Conversely, the leet jury, composed of better-off men, would have been less susceptible to this kind of pressure.

The second reason was bound with the development of Halifax's élite. The change in the way offenders were presented marked a shift away from an older, more 'democratic' system in which relatively humble men exercised a degree of control. In its place evolved a more centralised, oligarchic system in which leet juries came to dominate the court and monopolise its procedures. What happened in the internal workings of the leet, in other words, reflected the larger changes taking place in Halifax society.

In contrast to the township sworn men, the leet jury was dominated by a relatively small number of

wealthy inhabitants, some of whom tended to serve for extended periods.³³ The leet juries at Halifax and Brighthouse usually consisted of thirteen men drawn from the different townships (they were probably chosen by the steward or his deputy). Because their place of residence is rarely given it has not been possible to identify a large enough sample on which to construct a statistical analysis of their social status. However, the following two examples should give some impression of the kind of men who dominated the jury during this period.

Daniel Greenwood served twice as foreman of the Halifax leet jury, in 1661 and 1665. According to the hearth tax returns he lived in one of the parish's largest homes (it had nine hearths). He served as constable and churchwarden, and, in addition, was one of the feofees of the Brian Crowther charity.³⁴

Another feoffee, Joseph Fourness, a yeoman who later styled himself gentleman, served as foreman of the Brighthouse leet jury in 1648 and 1650. Fourness was one of the parish's most prominent men during the Interregnum. He was appointed by Parliament one of seven sequestrators of Halifax vicarage in 1643. Three

33. For example, Abraham Parkinson who served on nine leet juries between 1625 and 1659: YAS, MD 225/1/350, 355, 357, 359, 361, 368, 378, 384 (Halifax leet jury).

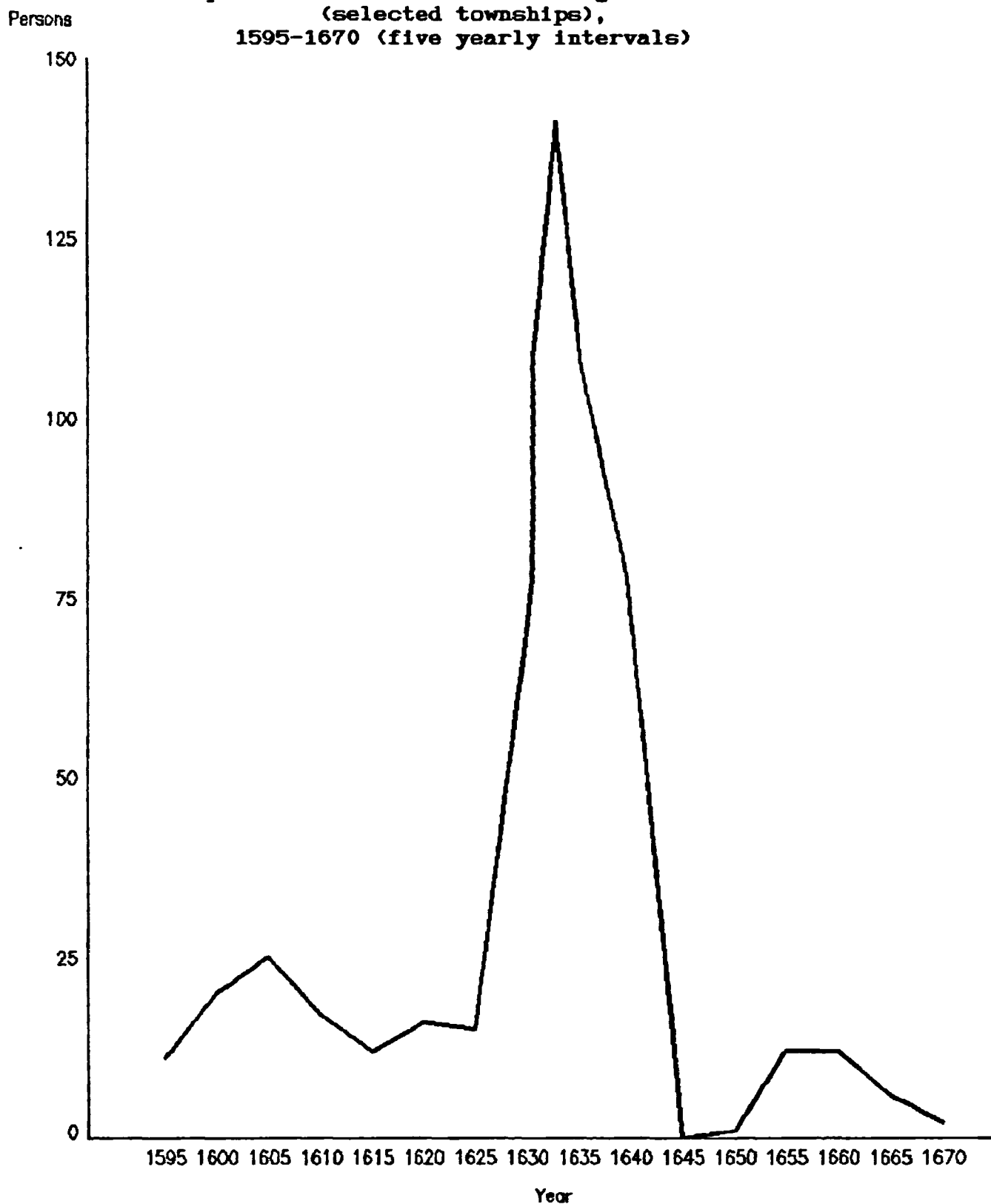
34. YAS, MD 225/1/384, 385/A, 387, 391 (Halifax leet jury); PRO, E.179/210/394a, f. 31v; 179/210/393, m. 54v; CDA, MIC:8/101 (1664); HAS/B:12/1 (passim).

years later he became a member of the committee for taking accounts in the wapentakes of Agbrigg and Morley. In 1651 he sat as a member of the commission of pious uses in Halifax, and three years after that he was one of fifty-nine voters in Halifax's first parliamentary election. He was high constable in the same year and also a governor of the grammar school. His property holdings were extensive: he had land in Ovenden, Northowram, Bradfordale, Hebden Bridge, Wadsworth and elsewhere - his considerable fortune amassed through the cloth trade and by a judicious marriage to a wealthy widow.³⁵

It was men of this stamp who, after 1626, came to dominate the leet. At around the same time the numbers presented at the court began a dramatic rise (Table 3.5). The escalation was most apparent in the numbers punished for assaults and bloodsheds (Fig. 3.3). In 1595, for example, only eleven persons were fined in connection with these offences. In 1600 twenty people were punished; twenty-five in 1605, seventeen in 1610 and twelve in 1615. Presentments then remained fairly stable at this level until 1627-28 when they reached forty-two. From then on they rose steadily (with the exception of a slight fall in 1631-32) until 1635 when

35. YAS, MD 225/1/373, 376; CDA, HAS/B:12/1, *passim*; HAS/B:22/27/3-4; SH:3/LAW/1; SH:6/LD/2; MIC:8/100 (1654); 'OLP' 9, 17, 18, 175; *LJ*, vol. 5, pp. 662, 666; *CJ*, vol. 2, p. 1000; T.W. Hanson, *The story of old Halifax*, pp. 165, 177, and 'Halifax parish church', part 1, pp. 56-57.

FIGURE 3.3
Assaults presented at Halifax and Brighthouse courts leet
(selected townships),
1595-1670 (five yearly intervals)



NOTE: As in Table 3.5.

SOURCE: YAS, MD 225/1 (1595-1670)

147 persons were presented. In the next seven years there was a gradual, though uneven, decline. Nevertheless, in 1641 assault presentments at the leet (sixty-four) were still six times higher than they had been in 1595. After 1642 there was a dramatic and persistent decline, the reasons for which will be examined below.

It is possible that this increase represents no more than a change in the way misdemeanours were prosecuted. It may have been that in the later 1620s and 1630s the leet started to punish offenders hitherto dealt with summarily by JPs (or, less likely, sent to quarter sessions or assizes - it is impossible to comment on this with any certainty owing to the lack of quarter sessions and assize records for the 1620s and 1630s), and that the declining numbers recorded at the leet after the Civil War represent a shift back to the JPs. If so, the real change was in the manner of prosecution (and hence record keeping) and not in the volume of prosecutions.

The absence of all the relevant records makes it impossible to be sure whether this is what happened. What can be said at least is that the leet was handling a vastly increased workload between the mid 1620s and the early 1640s. Why did this increase occur and what did it signify?

It may have been a response to greater lawlessness (albeit of a relatively minor nature) in the community.

It is difficult to prove this one way or the other, but the suddenness of the acceleration in the volume of presentments strongly suggests that the rise was due to a deliberate policy decision. The argument presented here is that the impetus behind the increase was part of a sustained campaign to bring higher standards of order to the parish, a campaign to reform morals and manners, for which the leet was recruited.

The timing of the campaign was determined by two factors: the one internal and long-term; the other external and short-term. First, it had to do with the particular stage of development and organisation reached by the élite. The men who dominated the parish administration as the campaign got under way were part of the first generation to grow to maturity in the atmosphere of Favour's puritan Halifax. Having imbibed his emphasis on learning, godliness, order and duty they now occupied a position in parish administration to undertake a reformation of manners.

The second factor was the deteriorating economic climate of the early years of Charles I's reign. In the West Riding the impact of scarcity and stagnation of trade was keenly felt.³⁶ In Halifax the difficult times were reflected in the spiralling cost of poor relief

36. H.H. Heaton, *The Yorkshire woollen and worsted industries*, pp. 189-90.

and extensive pauper apprenticing.³⁷ The 1631 Book of Orders, with its instructions on how to meet the emergency, contained explicit encouragement to owners and stewards of manors: they were to keep regular leets and were exhorted to inquire 'upon those articles that tend to the reformation and punishment of common offences and abuses'.³⁸

In other words, Favour's generation was entering the parish administration just as fears about disorder were reaching their peak. Anxiety at the centre about the potential threat to stability helped galvanise a local initiative. It would be wrong to suggest that the campaign was directed exclusively against the poor, or that support for it among the 'better sort' was either spontaneous or unquestioning. In fact, as we shall see, it was to prove deeply divisive. Nevertheless, its starting point was a desire to discipline the poor.

This inevitably entailed an attack on popular recreational activities. Oliver Heywood, who furnishes vivid descriptions of seventeenth-century Halifax's popular culture, recalled in 1680, after witnessing a May Day riot, that Favour had preached against 'the rude multitude' when they tried to bring in a maypole. Watching the mayhem Heywood concluded, 'There was never

37. Francois, 'The social and economic development of Halifax', pp. 244.

38. J.P. Kenyon, *The Stuart constitution*, pp. 500-1.

such work done in Halifax above 50 yeares past, at whilch time Dr. Favour was Vicar, Mr. John Barlow lecturer.'³⁹ The rising volume of presentments for assault may well be a reflection of attempts to curb such popular pastimes, which characteristically entailed violence against property and the person.⁴⁰

Confronting these disorders was one of the reformers' aims: another was to encourage the 'better sort' to shoulder their responsibilities, to live up to the standards expected of the dutiful and godly citizen. The increasing number of presentments of middling and rich men for a variety of community offences (most commonly polluting the water supply, and failure to contribute to the upkeep of roads and

39. Heywood, *Diaries*, vol. 2, pp. 270-71, saw 'a great number of persons of the poor and baser sort' gather together 'to bring in May'. Men and women wearing white waistcoats and sheets, and carrying garlands, branches, flowers and white banners with red crosses, arranged themselves in companies. Led by fiddlers, pipers and drummers they went from door to door collecting gifts. At one house where they were refused windows were broken. More than 100 revellers invaded the house of Dr. Hooke, the vicar. That night they danced around a maypole: 'many of them were drunk and mad ... hell is broke loose'. Heywood also recorded horse and foot races, and rushbearings where he saw 'multitudes of people meet, feast, drink, play and commit many outrages in revellings, in rantings, riding without any fear or restraint ... debauched work among lads, lasses, openly'. At rushbearings and tides 'great provisions of flesh and ale' were consumed in 'a barbarous, heathenish manner'. At a 'great cocking' a fight broke out among rich and poor; 'they fell to blows ... and all fought desperately a long while'; celebrations marking mid-summer resulted in an affray: *Diaries*, vol. 2, pp. 263-64, 272, 274, 279-80, 281.

40. Peter Burke, *Popular culture in early-modern Europe*, pp. 186-87.

bridges) is a reflection of this.⁴¹ Men and women of the 'better sort' were also prosecuted for disorders. Gentlemen like Samuel King and John Crosland were among those fined for assaults, as was James Oates who was said to have been worth £1,500 in personal and real estate.⁴² Other well-to-do inhabitants were cited at visitations for sexual misconduct, failure to attend church or ill rule on the Sabbath.⁴³

Predictably, the reformers' zeal for presenting their neighbours had the effect of dividing the community. It was a community through which, even before the campaign, there ran powerful cross-currents of bitterness and rivalry. Some of these derived from personal and family competition, the kind to which Heywood repeatedly referred when he bemoaned the

41. For example, Jasper Blithman, esquire, presented for failure to repair street paving: YAS, MD 225/1/352 (Halifax township presentments, Michaelmas and Easter); Tobias Barraclough, gentleman, was fined for the same offence: MD 225/1/354 (Halifax township presentments, Easter). Barraclough was one of seventeen subsidymen in Halifax township in 1641: PRO, E.179/209/363.
42. Crosland, described as gentleman in the court rolls (YAS, MD 225/1/366 (Halifax leet jury's presentments, Easter), served as constable (YAS, MD 225/1/357, Michaelmas). For Oates: CDA, SH:3/LAW/1. King, a Skircoat inhabitant, was a subsidyman (YAS, MD 225/1/37/A; PRO, E.179/209/363, 377). Both were fined for assaults: YAS, MD 225/1/368 (Halifax leet jury's presentments, Michaelmas), 356-360/A (Halifax leet jury's presentments, passim), 363, 356 (Halifax leet jury's presentments, Michaelmas).
43. For example, Robert Exley junior, whose father - also Robert - was a freeholder and leading man in the parish administration (above, p. 67n., below, pp. 95n., 104n.), was cited for drinking during divine service: BIHR, V 1627/CH, f. 144v; William Clayton, gentleman, was cited on suspicion of sexual incontinence: V 1633/CB, ff. 118, 149.

chronically litigious atmosphere."⁴⁴ Heywood was writing about post-Restoration Halifax, but assize, quarter sessions, Chancery and Exchequer records show that his remarks are equally applicable to the earlier period.⁴⁵

More important, however, were the religious and cultural tensions dividing the 'better sort'. Favour's message had a strong appeal, but the prosecution of wealthier men and women for sundry moral and community offences demonstrates that not all of the 'better sort' obeyed their vicar's strictures. 'Many ranting gentlemen', according to Heywood, participated in the rowdy popular festivities.⁴⁶ Halifax's élite did not fully turn its back on traditional festivals, pastimes and sports.

Further difficulties arose from chronic inter-township rivalry. A recurrent theme in early-modern Halifax's administrative history, this rivalry consistently undermined the solidarity of parish administration and its ability to act cohesively. The

44. Heywood, *Diaries*, vol. 2, pp. 248, 250, 273, 278.

45. Few collections of Halifax family papers dating from this period do not have some reference to protracted and costly litigation: CDA, HAS:390 (a dispute revolving around the contested will of Tobias Law c.1652 which alleged, among other things, an unlawful combination by leading families against Law's widow); HAS/B:22/29/2/1-5 (a dispute between two yeoman families over a watercourse); BL, Sloane MSS, 1357, ff. 3v, 91-92, 113, 119 (a prolonged legal quarrel between Henry Power, gentleman, and Thomas Radcliffe, gentleman over an unspecified matter). Cf. SH:3/LAW/1.

46. Heywood, *Diaries*, vol. 2, pp. 293-94. Cf. pp. 271-72.

out-townships were suspicious of what they saw as the centralising and expansionist tendencies of Halifax town, and resented what they considered to be the unequal distribution of the tax burden.⁴⁷ This was exacerbated by the widespread belief that Halifax landlords were directly responsible for the worsening pauper problem. The out-townships alleged that, for the sake of extracting higher rents, Halifax landlords crammed their buildings with poor tenants, and that they, the out-townships, were being made to pay for the landlords' greed by having to contribute to the relief of the poor.⁴⁸

The activities of Halifax landlords demonstrate that attitudes to the poor were not monolithic. Clothiers and other employers needed a steady supply of cheap labour which strict enforcement of Poor Law statutes jeopardised. Similarly, strict supervision and regulation of the drink trade ran against influential economic interests. The victualling and provisioning trade was a vital prop to the economy of Halifax as a

47. This led to the withholding of rates by Midgley and Warley in 1626. A compromise solution was found in 1636 only to break down later: CDA, MIC:8, ff. 48-51, 114, 121, 157; 'OLP' 10; SH:4/T:HX/1636; Betteridge, 'Halifax before the Industrial Revolution', part 1, p. 26.

48. The chapelries of Elland and Heptonstall repeatedly petitioned assizes and quarter sessions maintaining that they had no legal responsibility to contribute to the relief of the Halifax poor: YAS, Kendall MSS, 626, ff. 4-5, 43-45.

market town, both to the poor and to the better off.⁴⁹

A final reason why the campaign for order encountered opposition: it was waged primarily through the leet. This had the effect of consolidating the position of the manor at a time when hostility to manorialism in different parts of Yorkshire was on the increase. This hostility derived from the consequences of the demographic expansion of the late sixteenth and early seventeenth centuries and of the economic difficulties faced by the gentry. Mounting pressure on resources underlined the need for careful regulation of farming operations and common rights. As a result villagers found their customary rights increasingly curtailed, or even extinguished altogether. In addition, landlords, struggling to come to terms with the conditions created by the price inflation, sought to impose higher rents and entry fines, insist on common days' work, and enforce compulsory suit to manorial mills and courts.⁵⁰ These developments bred

49. The illicit drink trade was not confined to paupers trying to eke out a subsistence living. In 1668 a purge of illegal alehouses in the West Riding led to the prosecution of forty-three Halifax people. Twenty-eight of these have been identified and compared with the 1664 hearth tax returns. The analysis showed that 28.6% belonged to *social group 'E'*; 21.4% to '*D*'; 10.7% to '*C*'; 28.6% to '*B*'; and 10.7% to '*A*': WYRO, QS 4/8, f. 264; PRO, E.179/210/393. Among them, for example, was Richard Doliffe, gentleman, (11 hearths) a former constable and churchwarden: YAS, MD 225/1/396 (Halifax township presentments, Michaelmas); CDA, MIC: 8 (1661).
50. *The agrarian history of England and Wales*, vol. 4, ed. Joan Thirsk, pp. 403-6; J.T. Cliffe, *The Yorkshire gentry*, chs. 2-3; Ellis, 'A study in the manorial history of Halifax parish'.

intense resentment. The owners of Healaugh and Muker manors (North Riding) were denounced as 'heavy lords' when they attempted to override local customary rights and demand onerous rents and services.⁵¹ The lord of the manor at Methley, near Wakefield, Sir Henry Savile, inflicted 'very excessive and unconsionable fines on the poor copyholders' during the early years of the seventeenth century, which, says J.T. Cliffe, amounted to an eighty- or hundred-fold increase.⁵²

In Halifax opponents of manorialism had won some important gains earlier in the century. They had resisted with some success attempts to enforce compulsory suit to the lord's mills. Led by Favour, they had wrested supervision of the market from manorial control. Opposition was most marked in the sub-manor of Halifax where there emerged a body of substantial freeholders, and where common rights were dwindling, and copyhold tenure gradually disappearing. Here manorial institutions, including the sub-manor's leet, had fallen into decay.⁵³ What the campaign for order threatened to do was reverse this general trend by enhancing the manor of Wakefield's authority.

51. R. Fieldhouse and B. Jennings, *A history of Richmond and Swaledale*, pp. 122-30.

52. *The Yorkshire gentry*, pp. 39-42.

53. LCA, TW/HX/D, DB 206/1, 1653; TW/HX/A/121-247; Betteridge, 'Halifax before the Industrial Revolution', part 1, pp. 21-22; J. Lister, 'History of Shibden mill', esp. pp 235, 246-47.

IV

At the height of the campaign a coterie of wealthy men based in Halifax township came together with a plan which would both intensify the campaign and take it out of the manor's control. It would, at the same time, allow them to develop an institutional expression for the considerable informal power they already wielded. They may well have had in mind the example set by their neighbours at Leeds a decade earlier when leading merchant-clothiers successfully broke the manorial grip in which the town had been held. The 1626 charter that established Leeds as an incorporated borough was the culmination of a struggle by the urban élite there to acquire 'greater influence in local affairs and ... a more elaborate system of local government than that provided by the traditional manorial organisation'.⁵⁴ In Leeds the political and social power of manorialism was subsumed by the rule of a commercial oligarchy.⁵⁵

The Halifax oligarchy was led by Nathaniel Waterhouse.⁵⁶ Waterhouse was the younger son of a

54. G.C.F. Forster, 'The early years of Leeds corporation', p. 253.
55. J.V. Kirby, 'A Leeds élite: The principal burgesses of the first Leeds corporation', 'The manor and borough of Leeds, 1425-1662', and 'The rulers of Leeds: Gentry, clothiers and merchants, c.1425-1626'; Forster, 'The early years of Leeds corporation'.
56. Those in Waterhouse's circle were: Richard Barraclough, Thomas and Simeon Binnes, Samuel Mitchell, Thomas Radcliffe, Anthony Foxcroft, Thomas Lister, John Power, Hugh Currer, Robert Exley, Samuel Clough, John Wade: CDA, SH:4/T.HX/1635.

declining gentry family from Skircoat. He built up a modest fortune in the early part of the century through trading in the dyes needed by local clothiers with the wealthy London merchants, the Crispes." The men around Waterhouse formed a close circle. Several, including Waterhouse, had been friends of Favour. Thomas and Simeon Binnes were brothers; Waterhouse and John Wade were cousins. They witnessed each other's leases, rentals and quitclaims, and often acted together as executors of wills." Most of them had participated at one time or another in the parish administration through holding the usual offices. It is noticeable, however, that despite their standing they played little part in the leet's activities. Waterhouse had served only once as a leet juror, in 1624." It is possible that they were deliberately excluded for factional or political reasons. But this is not the critical point.

57. BL, Additional MSS, 31,007; LCA, DB 206/1, f. 2; Hanson, 'Nathaniel Waterhouse'. Waterhouse, like the other men in his circle, was one of the small number of inhabitants assessed for subsidies in the 1620s and 1640s: PRO, E.179/209/323, 330, 349, 360, 363, 377 (all Halifax township).
58. CDA, MAC:151/1; FW:42/1 (unsorted, temporarily 'box 1'); SH:3/L/12; SH:6/LD/45; SH:1/OB/1636; 'OLP' 115, 168; LCA, TW/HX/A/208A; TW/HX/A/144C; Watson, *The history and antiquities of the parish of Halifax*, pp. 609-627.
59. YAS, MD 225/1/349 (Halifax leet jury, Easter). Of the other original governors, one served three times, one served twice, and two served once. Eight, including Waterhouse's deputy, Anthony Foxcroft, do not ever seem to have been called to serve.

Even if they had been able to dominate the leet, any control they exercised would still have been contingent. What they wanted was an independent base through which to translate their informal authority into real power. The rising fear of disorder provided them with their opportunity.

Sometime before September 1635 they petitioned the king, it seems through the good offices of Sir William Savile of Thornhill. Savile, a leading landowner in Halifax and a member of the commission of the peace, probably supported the petition in a bid to win support from local clothiers for his family in its struggle with Sir Thomas Wentworth for primacy in the West Riding.⁶⁰ The petitioners complained that Halifax, 'a town of great clothing ... is now of late much impoverished and like to be ruined by reason of the great multitude of poor people there daily increasing'. The poor were, 'most of them idle and disordered people, embezzling or spoiling the work brought to them'. Poor rates had spiralled and prosperous inhabitants driven away to escape the closing financial drag-net. The proposed remedy was the establishment of a workhouse with thirteen of the parish's 'most able and discreet persons ... elected as governors of the said house' in a 'body politic forever', and who would have 'perpetual succession forever'. Of course, they

60. R.R. Reid, *The king's council in the north*, pp. 394-403. Cf. S.P. Salt, 'Sir Thomas Wentworth and the parliamentary representation of Yorkshire, 1614-1628', pp. 142-43.

had themselves in mind. And they were successful. In September 1635 a royal charter was granted and the Halifax workhouse officially came into being.⁶¹

There can be no over-estimating the implications of the workhouse for local government in Halifax. It was a unique institution, establishing the governors as 'a body corporate and politic', complete with their own seal, and autonomous from both the manor and the commission of the peace. The charter named Nathaniel Waterhouse and Anthony Foxcroft justices of the peace in Halifax, and although they were not part of the commission of the peace (and consequently not answerable to the *custos* in the normal way) they were instructed to execute the office 'in as ample a manner as any justices of the peace within the West Riding'. The governors were authorised 'to search any suspected houses ... for idle vagabonds, ruffians, and sturdy beggars ... and to place them in the workhouse, there to be set on work, and to be corrected and punished according to the good and wholesome laws of ... England'. They were also empowered to search 'all manner of taverns, dicing and gaming houses', and apprehend suspected persons and 'the tenants, masters, keepers, or occupiers of such houses'.⁶²

61. CDA, SH:4/T.HX/1635 is a seventeenth-century copy of the original petition and charter. It is reprinted in Watson, *The history and antiquities of the parish of Halifax*, pp. 592-609.

62. CDA, SH:4/T.HX/1635.

The governors proceeded to organise themselves with vigour. They elected a master, two treasurers, decided on a seal, settled rules for holding weekly courts, appointed an overseer, a clerk, a beadle and started to gather the necessary materials to equip the house.⁶³

There followed a flurry of activity. On October 28, 1635 John Cotes, a Halifax badger, was ordered to remove inmates from his house. Soon afterwards vagrants were rounded up and beggars whipped. Alehouses were searched, and those found tippling at unlawful times whipped or fined. Idle or disorderly apprentices were brought by their masters to the workhouse for chastisement.⁶⁴

The level of activity accelerated. In January 1636 the governors divided Halifax township into five precincts, each to be supervised by selected governors who were to keep 'privy watch' at least once a fortnight. They were to give an 'exact account' to the next meeting of the workhouse court of 'all special things occurring in their view' and of all 'foreigners' recently arrived. Within the precincts the inhabitants were assessed for liability to contribute financially to the workhouse.⁶⁵

63. CDA, MISC:181/1 (October 10 and 13, 1635). The workhouse itself was a building owned by Waterhouse.

64. CDA, MISC:181/1 (October 28 and December 9, 1635, and *passim*).

65. CDA, MISC:181/1 (January 27, 1636).

It was money, however, that proved to be, in large measure, the workhouse's undoing. In order to fund it rates had to be levied, but it was unclear who was liable to pay. The charter itself was ambiguous on this point, and it was the governors' most conspicuous failure that they were unable to convince the out-townships to co-operate.⁶⁶ Sited in Halifax town and with ten of the original governors resident there (and the others all domiciled in the parochial district) the workhouse was seen as Halifax-based and Halifax-run, and the out-townships saw no reason to support it. When the governors ordered churchwardens and overseers throughout the parish to collect six months assessment 'over and besides the assessment you have already assessed', the two chapelries of Elland and Heptonstall adamantly denied liability. A subsequent order made at quarter sessions authorising the governors to levy additional sums for the wages of two beadles, stipulated that the 'parish ought to contribute thereunto as much as the town if not more'. This hardly smoothed things over. The out-townships' stand occasioned petition and counter-petition to the justices, with considerable confusion as orders were

66. In 1684, when attempts were made to revive the workhouse, legal opinion was sought as to the limits of the jurisdiction set out in the charter. Henry Pollexson, the attorney consulted, wrote, 'I do conceive that it doth extend to the whole parish': CDA, MISC:181/1 (following entry dated December 15, 1638). However, the quarrels of the 1630s make it clear that this opinion was not shared by the out-townships.

countermanded and then reiterated. An effort by Sir William Savile failed to achieve a compromise.⁶⁷

The workhouse was seen as an expensive vehicle for the ambitions of a narrow, self-appointed, self-serving élite. A royal charter could go some way to overcoming these objections, but the governors' failure to provide a cost-effective service, policing the parish cheaply (and bringing down the burden of poor relief - their stated aim) ultimately destroyed what claim to support they could marshal. The extent of this failure is evident from the whippings ordered by the governors. Between December 1635 and April 1638 (the period for which records survive) a total of sixty-seven whippings were ordered. Only thirty-six of these were for offences the workhouse was established to deal with - begging, vagrancy, tippling, unlawful gaming. The remainder were for internal disciplinary offences (Table 3.10). The proportion of punishments awarded for disciplinary offences became higher as time went on (Table 3.11). Controlling the inmates was no easy task. Instead of providing a model for the parishioners' edification, they remained refractory, fought among themselves, abused the governors, and engaged in illicit trade in embezzled workhouse material with some

67. CDA, MISC:181/1 (October 10, 1635, January 23, 1636, April 1638); Watson, *The history and antiquities of the parish of Halifax*, pp. 606-10; T.W. Hanson, 'The minutes of Halifax workhouse, 1635-1704', esp. pp. 91-92.

TABLE 3.10:

Whippings ordered by the Halifax workhouse governors,
December 1635 - April 1638

1. Offences against good order

<i>Offence</i>	<i>Number of whippings</i>
1.1 Begging	7
1.2 Vagrancy	5
1.3 Idle/disorderly life	4
1.4 Tippling	3
1.5 Scolding	3
1.6 'Composite' offences	8
1.7 Other/unspecified	6
<i>sub total</i>	36 (53.7%)

2. Internal disciplinary offences

2.1 Spoiling wool/yarn	16
2.2 Embezzling wool/yarn	10
2.3 Other disciplinary offences	5
<i>sub total</i>	31 (46.3%)
TOTAL	67

NOTE: 'Composite' offences combine allegations of two or more types: eg. begging and tippling.

SOURCE: CDA, MISC:181/1

TABLE 3.11:

Whippings ordered by the Halifax workhouse governors,
January 1637 - April 1638

1. Offences against good order	10 (37%)
2. Internal disciplinary offences	17 (63%)
TOTAL	27

SOURCE: As in Table 3.10

of the less morally fastidious townspeople.”

Expensive and inefficient the workhouse certainly was. But more than that, it embodied a direct challenge to the existing power-bases. Not only were two of the governors JPs within Halifax, they were autonomous from the commission of the peace. Moreover, unlike the county's other workhouses, at Wakefield and Richmond for example, West Riding magistrates could not interfere in the organisation or running of the Halifax institution.”

But it was the manor's authority that was being most threatened. The thirteen governors (the number is significant) were nothing less than a proto-corporation. If the workhouse survived and prospered its logical direction would be to evolve into a fully-fledged town corporation with Waterhouse as mayor and his twelve fellow governors as aldermen. It is not known whether the manor participated in any way in the petitioning during the rating disputes. If it did it was behind the scenes, for no direct evidence has survived. But the manor did play one very public part in attacking the workhouse.

68. CDA, MISC:181/1 (March 2 and September 11, 1636, November 15 and 22 and December 6, 1637).

69. The charter stipulated that the governors' actions in running the workhouse were to be 'without the impeachment of ... justices, escheators, sheriffs, ministers, servants of other subjects of us ... any statute, law, ordinance heretofore made or done, or hereafter to be made or done, to the contrary notwithstanding ...': CDA, SH/T.HX/1635.

The governors had shown themselves eager to enforce the Poor Laws: their first public act had been to order the removal of inmates. As noted above, there was an ambiguous attitude in Halifax to enforcing this law as it ran counter to certain economic interests. In recognition of this prosecutions were comparatively rare. But in October 1638 the leet jury exhibited an uncharacteristic interest in those harbouring inmates. Thus it was with conscious irony that it presented Waterhouse and Foxcroft for this very offence, fining them £5 each.⁷⁰ This was the manor's most barbed attack, but it was not the first: both men, and several of their fellow governors, had earlier been presented for a variety of other infringements.⁷¹

At some point soon after Waterhouse and Foxcroft were fined the workhouse 'went down'. The governors' minutes give no clue as to the exact date or, more important, as to why this happened, but the probable reasons are clear enough. First, there was the continuing vitality of manorialism and its ability to

70. YAS, MD 225/1/364 (Halifax leet jury's presentments, Michaelmas). Waterhouse and Foxcroft, who were among twenty people presented for keeping inmates, suffered the largest fines.

71. Foxcroft was fined on eight other occasions between 1630 and 1641: YAS, MD 225/1/355, 356, 358, 366, 368 (all Halifax leet jury or Halifax township presentments). Waterhouse was fined on one other occasion over the same period: MD 225/1/358 (Halifax leet jury presentments, Easter). Samuel Mitchell, Thomas Radcliffe, Robert Exley and Richard Barraclough were other governors punished by the leet: MD 225/1/353-66, *passim* (Halifax leet jury and Halifax township presentments).

fight back. Although there was hostility to the manor in certain quarters, there was also visible support. After all, for a chosen few the leet offered considerable scope for exercising authority over their neighbours. And for others, particularly the larger copyholders, there were economic benefits to be had from remaining within the manorial framework.⁷² Then there was the governors' failure to win the out-townships' co-operation, fatally eroding the workhouse's financial underpinning.⁷³ Third, despite apparent initial backing from Sir William Savile, which was probably no more than a short-term piece of political opportunism, the workhouse lacked a powerful patron who could compel the out-townships' acquiescence or defend it from the manor. Conversely, the manor's proprietor, Sir Gervase Clifton, was a seasoned and influential politician with connections both at court and in the county.

The final reason was political. During the Civil War Foxcroft sided with the king; other governors were prominent supporters of Parliament.⁷⁴ While it would be

72. Ellis, 'A study in the manorial history of Halifax parish'.

73. By 1638 the governors were themselves having to raise money out of their own pockets: CDA, 'OLP' 115.

74. Foxcroft was alleged to have been 'in actual arms' for the king and was sequestered after the Civil War: CDA, SH:6/LD/45. There is no evidence in respect of Waterhouse's allegiances, although the fact that he remained in Halifax during the Royalist occupation by Mackworth in 1643-44 when

unwise to read the political stances adopted after the outbreak of hostilities back into earlier events, and the issues that divided the governors after 1642 were not necessarily operative in the preceding years, the possibility that political and ideological questions disrupted their solidarity cannot be discounted. There may also have been political opposition from outside, from the parishioners. The governors' last recorded act, in December 1638, was to co-opt the new vicar of Halifax, Dr. Richard Marsh.⁷⁵ Marsh, an Arminian, was deeply unpopular in the parish, and his association with the workhouse was unlikely, in the circumstances, to have been to its credit.⁷⁶

By the time of Marsh's appointment the governors' confidence had been thoroughly undermined. The energy and commitment demanded by the workhouse became too much for even the most determined to sustain. Although provision had been made for weekly courts, long gaps

(n.74 cont.)

many of the parish's Parliamentarians fled is perhaps suggestive. Hugh Curren and Thomas Binnes were staunch Parliamentarians: both were appointed by Parliament to sequester the vicarage of Halifax after the Marsh had been displaced: Hanson, 'Halifax parish church under the Commonwealth'.

75. CDA, MISC:181/1 (December 15 and 24, 1638).

76. Hanson, 'Halifax parish church', part 1, pp. 42-48; Watson, *The history and antiquities of the parish of Halifax*, pp. 487-91.

began to appear between the minutes.⁷⁷ Excusal money was offered by those anxious to evade selection as master of the house (the office, held for twelve months, was rotated among the governors). A note of desperation entered John Power's plea when his turn came to serve, but his protestation that he was old and infirm was unavailing. He died within weeks of assuming office.⁷⁸

By the time the workhouse collapsed the whole campaign for order was in decline (as the numbers presented at the courts show). The parish by then probably craved respite from this intensive phase of policing: by the late 1630s the campaign had been underway for more than a decade and had proved immensely divisive. But more important, in the years preceding the outbreak of the Civil War, new religious and political issues intruded onto the agenda of parish administration. The arrival of Richard Marsh as vicar and justice of the peace, and the growing financial burdens attendant on the Bishops' Wars underscored the new priorities of doctrinal conformity and political compliance. As the wider political debate intensified, the reformation of morals and manners was rendered increasingly otiose.

77. This was almost certainly due to the irregular keeping of courts rather than the irregular keeping of minutes, but see Betteridge, 'Halifax before the Industrial Revolution', part 2, pp. 84-86.

78. CDA, MISC:181/1 (September 29 and December 15, 1638).

V

On the eve of the Civil War Halifax's traditional administrative organisation seemed to be impregnable. This was soon to change. The Civil War brought a new crisis for the traditional order, one which it survived, but not completely unscathed, and with a modified balance between church, magistracy and manor.

The position of the church was the first to be attacked. The abolition of the ecclesiastical courts by Parliament in 1642 at a stroke destroyed ecclesiastical influence in policing until the Restoration. It was followed by the sequestration of Halifax vicarage, and the removal of the vicar from the West Riding commission of the peace.

The disruption of manorial influence was more complex. It arose, in the main, from the pattern of popular allegiance during the Civil War. Clarendon characterised support for Parliament in Yorkshire as being strongest among 'the common people', while large numbers of the leading gentry adhered to the king.⁷⁹

79. 'There were very few gentlemen, or men of any quality, in that large county who were actively or factiously disaffected to his majesty'. The Fairfaxes 'were governed by two or three of inferior quality, more conversant with the people': *The history of the Great Rebellion*, vol. 2, ed. Macray, pp. 287. Although not always a reliable witness (J.T. Cliffe points out that both Royalist and Parliamentary factions in Yorkshire had their share of rising and declining gentry: *The Yorkshire gentry*, ch. 15. See Hill, *Puritanism and revolution*, ch. 6, for criticism of Clarendon's theory of popular allegiance), Clarendon was at least right when he pinpointed Parliament's support as being rooted in the clothing towns of the West Riding. The

In Halifax itself the gentry-people split could hardly have been more clear-cut. While the freeholders, clothiers and artisans rallied to the Fairfaxes, local gentlemen joined the king.⁸⁰ Sir William Savile of Thornhill died as Royalist governor of York.⁸¹ The Kay family also supported the king, as did the Sunderlands.⁸² Richard Marsh fled Halifax in 1643 and did not return until 1660.⁸³ This left Thomas Thornhill and John Farrer as Halifax's only JPs, but by now both

(n, 79 cont.)

clothiers of the Halifax-Leeds-Bradford region, he wrote, 'naturally maligning the gentry', (many of whom were Catholic: P.R. Newman, 'Catholic Royalists in northern England') opposed the king: *The history of the Great Rebellion*, vol. 2, ed. Macray, p. 464. This was something Charles I recognised when he instructed the Earl of Newcastle to pay special attention to the 'ill-affected, especially Leeds and Halifax': *The letters of King Charles I*, ed. Sir Charles Petrie, pp. 129-30.

80. For further evidence of the clothing districts' allegiances: Jonathon Priestley, *Memoirs of the family of the Priestleys*; *The autobiography of Joseph Lister*, ed. T. Wright. According to Lord Savile it was 'well known to all Yorkshire that many of his tenants and of other men's are favourers of that [ie, Parliament's] cause, and do pay his rents to the [king's] enemies ... but to say the truth, there are few in the West Riding ... who do not in this case play the knaves': 'Papers relating to the delinquency of Lord Savile', pp. 9-11, 14.
81. P.R. Newman, 'The defeat of John Bellasyse: Civil War in Yorkshire, January-April, 1644', pp. 123-24; *The parliamentary representation of the county of York*, ed. Gooder, pp. 49-51.
82. Sir John Kay died before the outbreak of hostilities. His son compounded for delinquency; Abraham Sunderland of High Sunderland, JP, died during the siege of Pontefract: H.P. Kendall, 'The Civil War as affecting Halifax and the surrounding towns', pp. 84-85; *Royalist composition papers*, vol. 2, p. 43.
83. Hanson, 'Halifax parish church', part 1, pp. 42-49.

were old men and showing few signs of activity."⁸⁴ Most significant of all was the Royalism of the lord of the manor of Wakefield, Sir Gervase Clifton, whose estates were placed under sequestration."⁸⁵

Of the old magisterial families William Farrer was now the sole representative."⁸⁶ New men, like Henry Tempest of Tong, emerged to fill the gap. Although not resident in Halifax, Tempest quickly made his presence there felt after his appointment to the West Riding bench (probably in 1646 or 1647).⁸⁷ Other interregnum JPs had less claim to pedigree than Tempest, scion of an ancient and wealthy Yorkshire family, and were possessed of more modest estates. They included John Hodgson of Coley, John Lumme of Northowram and Joshua Horton of Barkisland and Sowerby."⁸⁸

84. Thornhill was baptised in 1585, Farrer in 1583. Both died in 1648: *West Riding quarter sessions records*, ed. Lister, pp. 27n, 45n.
85. He later compounded, as did the lord of the sub-manor of Hipperholme, Langdale Sunderland: *Calendar of the committee for compounding with delinquents*, part 1, ed. M. Green, pp. 91, 107, 107, 799; part 2, pp. 1183, 1318; *Royalist composition papers*, vol. 2, p. 42.
86. Farrer was named to the bench in February 1651: PRO, C. 231/6, f. 210.
87. Tempest, a kinsman of Lord Ferdinando Fairfax, served as a captain (and later colonel) in the Parliamentary army. BCA, Tong MSS, 2/7, 2/9, 10/5; *The parliamentary representation of the county of York*, ed. Gooder, pp. 71-72. The precise date of his appointment is unknown. His first signs of judicial activity were in March 1647: PRO, ASSI 45/2/1/254. His first known attendance at quarter sessions was in April 1647: WYRO, QS 4/2, f. 5.
88. Hodgson wrote a detailed account of his role in the Civil War: *The autobiography of Captain John Hodgson*, ed. J.H. Turner. Horton, a religious Independent, had served as high

Another prominent figure during the Interregnum was Jeremy Bentley, paymaster to Sir Thomas Fairfax's Yorkshire forces, who in 1654 became Halifax's first MP.⁸⁹ Manning the intermediate levels of parish administration were men like John Brearcliffe, Joseph Priestley, Michael Hasleden and Joseph Bannister, all of whom served as soldiers for Parliament.⁹⁰

It was these men who, as JPs, commissioners, churchwardens, constables and overseers, filled the power vacuum left behind by the abolition of the church courts and the disarray of the traditional élite.⁹¹ They did this in the early stages by tightening their

(n. 88 cont.)

constable for Morley wapentake in 1625, and was precisely the kind of man Clarendon had in mind when he complained of local government under the Commonwealth passing to men of 'a more inferior sort', now exercising 'great insolencies over those who were in quality above them and who always had power over them': *The history of the Great Rebellion*, vol. 4, ed. Macray, p. 287. Cf. Hanson, 'Halifax parish church', part 2, p. 58; CDA, 'OLP' 9, 175.

89. BCA, Tong MSS, 10/3.

90. For Brearcliffe, constable, churchwarden, overseer, feoffee of the Brian Crowther Charity and juror on the commission of pious uses: CDA, MISC:182; T.V. Hanson, 'Three Civil War notes', pp. 253-55. For the Priestley family: Priestley, *Memoirs of the family of the Priestleys*, esp. pp. 18-26. Hasleden, a soldier under Sir Thomas Fairfax, was a leet juror, churchwarden and constable: PRO, SP 24/52 (Hasldine vs. Ramsden, petition of Michael Hasldine, October 26, 1649); YAS, MD 225/1/347 (Shelf township presentments, Michaelmas), 358 (Brighouse leet jury, Michaelmas); CDA, MIC: 8/68. Bannister, a bailiff in Halifax, fought under the Fairfaxes and was captured at Seacroft: PRO, ASSI 45/2/2/22.

91. There was no room for a revival of the workhouse. Nathaniel Waterhouse died in 1645. Another governor, Samuel Mitchell, died at around the same time: BL, Sloane MSS, 3481, f. 94. The Royalist Anthony Foxcroft was disabled from holding office.

control over existing institutions rather than through any significant innovation.

Constables, who were still manorial officers, were instructed to ignore the leet and bring their presentments to petty sessions.⁹² Subsequently the leet had great difficulty in getting constables to attend, and those that did, under threat of fine, often failed to bring with them their list of presentments.⁹³

Some offences which would previously have gone to the leet were now going to quarter sessions and assizes. Thus, at the height of the dearth in 1649, middlemen accused of infringing economic regulations were indicted at quarter sessions instead of appearing before the leet.⁹⁴ It is noticeable too that the last cases alleging the keeping of inmates and of building cottages were heard by the leet in the 1630s. Thereafter these cases (though still few in number) went only to assizes or quarter session, indicating a shrinkage in the scope of the leet's jurisdiction. But the most dramatic assault on manorial jurisdiction came in 1650 when, after a double execution, Parliament

92. In October 1647 Halifax township constables reported to the leet that, 'our presentment has been called by warrant at every privy sessions': YAS, MD 225/1/373/A (Halifax township presentments, Michaelmas).

93. Halifax township constables and sworn men did not start coming to the leet regularly until the early 1650s. Men from the other townships attended more often, but were still being presented for failure to do so throughout the 1650s: eg. YAS, MD 225/1/376 (Heptonstall presentments, Easter), 378 (Midgley presentments, Michaelmas).

94. WYRO, QS 4/2, ff. 103v-104.

ordered the abolition of the gibbet. The exact circumstances behind this development are unknown, and there is no direct evidence to suppose that the new élite was responsible, although at least one commentator believes this was the case.⁹⁵ In any event, the dismantling of the gibbet was of great symbolic value. While in operation it had been the most vivid, the most public, testimony to manorial authority.

Tempest and his allies were able further to consolidate their position through committee work. In 1651 the commission of pious uses was established to trace money and bequests made over for the church, schooling and relief of poverty. Tempest was one of the commission, and his colleagues belonged to the now familiar roll-call of Puritan worthies. They included Jeremy Bentley, Joseph Fourness, Joshua Horton and John Lumme. They and the jurors they empanelled were particularly interested in monies held by Royalist sympathisers (who were understandably reticent about handing it over for the use of the Commonwealth).⁹⁶ In this respect the commission had a political dimension: it had the twin aims of calling to account Royalist enemies and providing a power-base for the new élite.

The 1651 commission of pious uses was merely one

95. Armitage, 'Halifax gibbet law', p. 12. Indeed, some leading men, supporters of Parliament (including Francis Priestley), played active parts in the last gibbet trial: Midgley, *Halifax and its gibbet law*, p. 59.

96. CDA, 'OLP' 108-12.

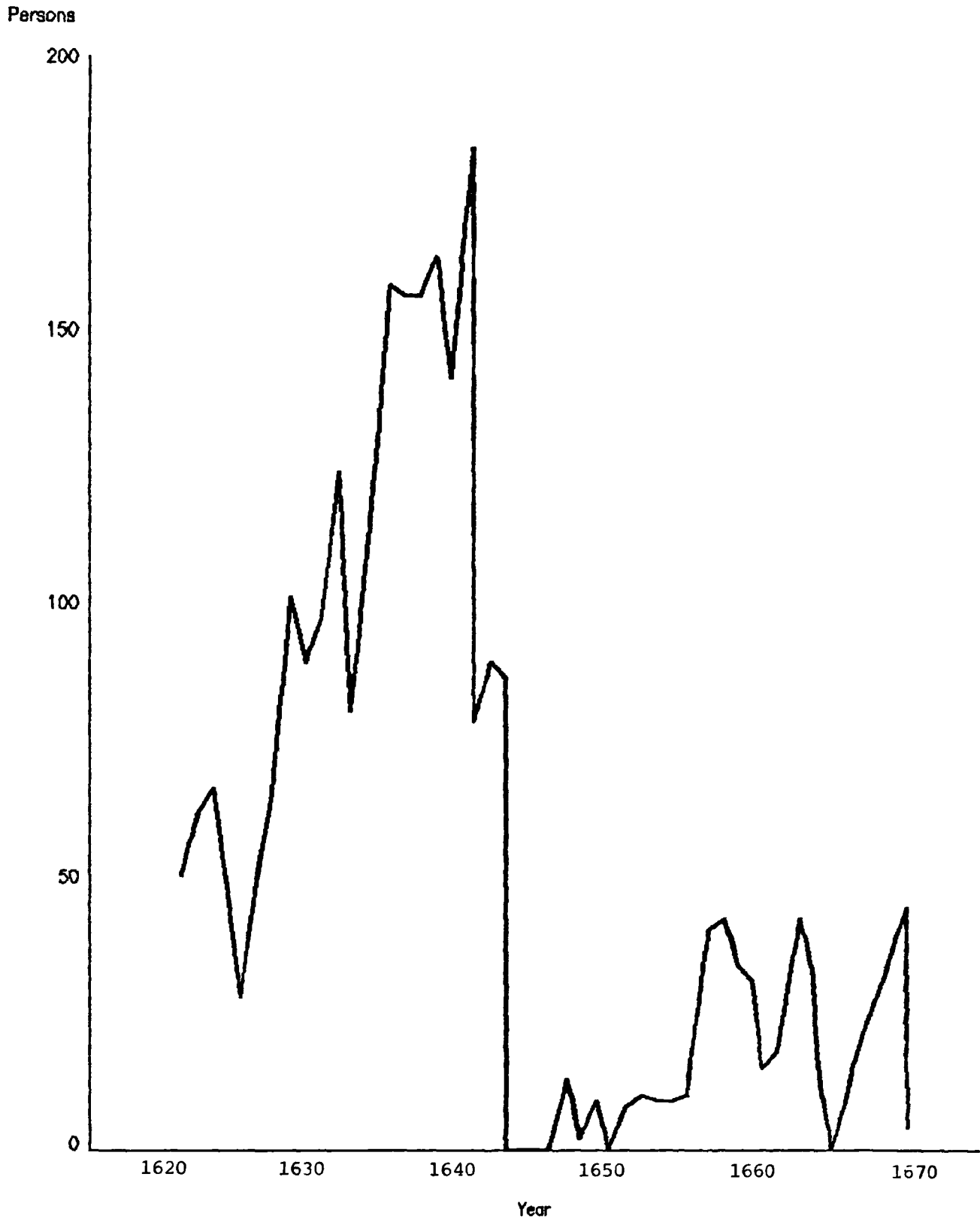
step along the way of the new élite's rise to power. It reached its apogee three years later when Halifax parochial district was rewarded for its loyalty to Parliament by being granted the privilege of returning an M.P. The election, besides enhancing the influence of Jeremy Bentley (elected unopposed by fifty-nine freeholders), underlined the exclusion of Royalists from parish affairs: formerly influential figures like Anthony Foxcroft, were disabled from voting. For a brief moment it looked as if Halifax was destined to achieve even greater things. Soon after Bentley's return discussions got under way with a view to obtaining a charter of incorporation, which would have permanently annihilated manorial influence, as at Leeds in 1626. However, the out-townships refused to co-operate and the plan ultimately fell through."

Had Halifax succeeded in securing incorporation it would have availed the new élite little in the long term. The Restoration reversed many recent developments: Halifax lost its MP; its Puritan justices (Hodgson, Horton and Lumme) were displaced from the commission of the peace; and back came the church courts and the old magisterial families." The Republican élite and the power-bases it had cultivated collapsed.

97. CDA, 'OLP' 9.

98. Tempest died in 1658: *The parliamentary representation of the county of York*, ed. Gooder, p. 72.

FIGURE 3.4
Presentments at Halifax and Brighthouse courts leet
(selected townships), 1620-1670



NOTE and SOURCE as in Tables 3.5

But while the Restoration brought about the return of many aspects of the traditional order, it was unable to reactivate the leet. As Figure 3.4 clearly shows, the leet was a much less vigorous institution after the Civil War. Its meetings had been disrupted by fighting in late 1642, and after it resumed regular sittings in April 1647 it dealt with a vastly reduced workload.⁹⁹ Only twenty-four persons were presented between 1647 and 1649. Over the next fifteen years the numbers recovered slightly, but they were still well below the level for the early 1620s (before the campaign for the reformation of morals and manners began), and were only a fraction of the level reached in the 1630s when the tribunal was at the height of its powers. From about 1665 the numbers again went into decline. In 1670 only four people were presented. Although it continued to meet regularly and make occasional presentments, it never recovered its former vitality, and to all intents lost its leading role in policing the parish.¹⁰⁰ The leet's decline was the most long-lasting impact of the

99. The last leet to conduct any business before the outbreak of hostilities was held in April 1642. The following Michaelmas juries were empanelled but no presentments made and no constables appointed. The court attempted to meet in October 1644, but only two jurors (instead of the usual thirteen) sat and no business was transacted. In October 1646 there was an abortive attempt to hold a leet at Brighthouse: YAS, MD 225/1/369-72.
100. This is not imply that the leet died away completely. At the beginning of the eighteenth century it was still punishing offenders. At the Easter court in 1701, for example, the Halifax jury presented four people. The Wakefield jury also made some presentments: YAS, MD 225/1 (roll for 1700-01).

Civil War on the structure of policing.

Two questions remain, neither easily resolved. First, what did the Republican JPs and their allies do when they took control of policing? Was law enforcement different in the later 1640s and 1650s? Unfortunately, the records on which the answer to this depends, JPs' notebooks indicating the kind of work they did out of sessions, do not exist.¹⁰¹ The number of cases tried at quarter sessions and assizes is too small (inevitable in a parish study) to permit any kind of meaningful analysis, and in any event most of them were initiated as the result of a personal complaint by the victim rather than as the result of official action. The limited evidence available - mainly constables' accounts - suggests that the Interregnum justices took an keen interest in the supervision of sexual morality, drinking and gaming habits, and church attendance, although the scale of the action they took on these matters remains unknown.¹⁰² This is a significant gap in our knowledge of what happened in mid-seventeenth-century Halifax; but perhaps what the new regime did

101. That of Captain John Pickering (G.D. Lumb, 'Justice's notebook of Captain John Pickering': it runs from 1656 to 1660) amply illustrates the nature of the Puritan magistrate's concerns during the Interregnum. He dealt mostly with allegations of drunkenness, sexual incontinence and swearing. Unfortunately, nothing similar survives for Halifax in this period.

102. For example, CDA, SPL:143 (accounts of Michael Earnshaw, entry dated January 4, 1653; of Isaac Farrer, February 26, 1658 and *passim*). Cf. Tables 3.6 and 3.7 for the prosecution of sexual and moral offences during the Interregnum.

with its power is less important than the fact than the balance of power itself had shifted. The key issue was how the organisation of crime control changed, and who now controlled it.

The second question concerns an aspect of that change: why did the manor fail to recover its lost ground at the Restoration? There is no clear answer to this, but there are two possible explanations: first, Restoration JPs, for their own political reasons, may have been unwilling to see the balance of power revert to its pre-Civil War condition, unwilling, that is, to squander their fortuitous inheritance. Second, for those of the 'better sort' anxious to play a role in parish affairs, a new and promising opportunity presented itself. The ignominy with which the workhouse 'went down' meant that few would countenance its immediate revival. But, instead, political ambitions could be pursued over the next generation through the newly emerged vestry which offered richer inhabitants an alternative instrument of authority.¹⁰³

VI

In summary, there are three points worth emphasising. First, on the question of the relationship between prosecuted crime and 'real' crime it is plain that when

103. For the emergence of the vestry, which goes beyond the chronological scope of this thesis, see Betteridge, 'A study of Halifax administrative records', pp. 36-37.

it comes to petty offences the key factor determining levels and patterns of prosecution is not how much crime there was in the community, but how determined and able the authorities were to suppress it. Second, events in Halifax underscore the active and independent role played by the 'middling' or 'better sort' in local law enforcement and administration. As Chapter Nine will argue, this independence had important implications for the workings of quarter sessions and assizes.

Finally, as the convoluted manoeuvring within Halifax shows, control of policing was a highly politicised affair. This was not simply factional politics, although obviously factionalism, the jockeying of groups cohering around personal connection or shared interests, played a large part in the story. The politics involved had an ideological element. We get a clearer sense of this if we look beyond the parish boundaries for further evidence of agrarian discontent and opposition to manorialism.¹⁰⁴ For it was not just in Halifax that the manor's enemies attempted to overthrow what they saw as a redundant and oppressive institution. During the Interregnum, when sequestration robbed Royalist landlords of their confidence and their capacity to defend themselves, charges were brought in King's Bench (or the Upper

104. For the wider context of agrarian disorder: Brian Manning, 'The peasantry and the English Revolution', and *The English people and the English Revolution*, esp. pp. 202-15.

Bench as it became known after Charles I's execution) against the owners of manors for holding courts leet and baron unlawfully. Most of the complaints originated in the West Riding: at Beeston, Honley, Woolley, Darton, Hunshelf, Ardsley, Hoyland Swaine, Wortley, Carleton and Fairburn; and one came from Etton in the East Riding.¹⁰⁵ Such actions would probably have enjoyed the tacit approval of the county's Republican ruling class: as the Yorkshire commissioners for sequestrations noted in 1656, many stewards of manor courts 'have been very strong for the late king's party, and are, and have been, very active ... against the well affected people'.¹⁰⁶

Lack of documentation means that the background to the King's Bench prosecutions remains obscure: some undoubtedly derived from the old economic grievances

105. For the impact of sequestration on the Kent gentry: Alan Everitt, *The community of Kent and the Great Rebellion, 1640-1660*, pp. 170-72. Sixty-one Royalists from fifty-four Yorkshire families had their properties (including 103 manors) placed under sequestration: P.G. Holiday, 'Land sales and repurchases in Yorkshire after the Civil Wars, 1650-1670'. For the King's Bench cases: PRO, KB 9/828, m. 99; 9/875, mm. 6-10; 9/877, m. 116; 9/878, m. 75; 9/879, m. 442.
106. 'Letters of Yorkshire commissioners of sequestrations to Cromwell, 1655-1656', ed. George Duckett, p. 92. There was a long history of tension between tenants and stewards. The preamble of 2 James I, c. 5, an act to prevent over-charging by stewards of courts leet and baron, noted that people were 'unjustly vexed, and by grievous fines and amerciements unduly punished'. Charges against delinquent stewards at Leeds, Carleton Camelforth, Selby and Cawood and elsewhere were pursued through the indemnity committee: PRO, SP 24/75 (Sykes vs. Marshall, petitions of William Sykes, November 3, 1647 and December 12, 1649); 24/70 (Pothan vs. Headley, petition of William Pothan, November 28, 1651); 24/1, ff. 134, 195.

against manorialism; others from the desire to see Royalist sympathisers ousted from posts of influence. But there was certainly more to it than this. In some places radical rhetoric about the rights of freeborn Englishmen permeated the attack on feudal vestiges. This was nowhere more vividly spelt out than at Sheffield in 1658. Three Hallamshire poachers cut off the head of a deer they had stolen from the delinquent Earl of Arundel whose massive enclosed park near the town was a long-standing source of discontent to local artisans. The poachers stuck the deer's head on top of the market cross, to which they pinned a note. It began: 'There once was a Parliament engaged to root out and suppress all the lords of the manors with all this Norman blood ...'.¹⁰⁷ With feelings like this running against manorialism it is hardly surprising that law enforcement generated the kind of bitter rivalry we find evidence for in Halifax.

At the local level, then, enforcing the law during the English Revolution involved coping with administrative disruption and change, and was overlaid with factional and ideological dispute. But what was happening at the county level?

107. PRO, KB 9/897, m. 388. There is a copy of the indictment in the West Riding indictment book covering this period: WYRO, QS 4/5, f. 94v.

Chapter Four

Enforcing the law in the county: Priorities and problems

During the 1640s, owing to its vital economic and strategic importance, Yorkshire became a major theatre of operations in a bitterly contested military struggle. As part of a 'war zone', how was law enforcement affected? According to G.C.F. Forster, whose researches on government in the county emphasise the themes of stability, continuity, and a quick and comparatively smooth return to normality:

'contrary to what one might have expected, the unsettled times resulted in no spectacular increase in prosecutions for criminal offences and ... apart from their concern with sedition and security the J.P.s faced no special problems of law enforcement during the sixteen-forties and fifties'.¹

There are, however, reasons to doubt such 'optimistic' conclusions. The lengthy gaol calendars of the later 1640s alone at least raise the possibility that the turmoil made some impact on law enforcement.² Of course, shorn of time and place, the figures prove

1. 'County government in Yorkshire during the Interregnum', p. 89 and *passim*. Other historians of the period are in broad agreement: J. Binns, 'Scarborough and the Civil Wars, 1642-1651', pp. 120-21; G.E. Aylmer, *The state's servants*, pp. 305-8.
2. Above, pp. 44-48.

nothing. What this chapter attempts to do is to put crime and policing in the context of revolutionary England. It discusses conditions in the county, and the priorities and problems facing the law enforcement system.

I

The routine tasks of law enforcement during this period were made more difficult by the disruption of the courts. Periodically interrupted before the outbreak of hostilities, meetings finally came to an end in mid 1642.³ The last pre-war meeting of York assizes was in August, and was notable less for any criminal business transacted than as a vehicle for Royalist and Parliamentary factions advertising for support in the county.⁴ In the North and West Ridings JPs abandoned their sessions during the summer, and the same is probably true of the East Riding.⁵

Apart from a Michaelmas sessions at Thirsk in October 1643, when a group of seven Royalist justices managed to assemble, for three years all normal

3. JPs were prevented from holding quarter sessions in the North Riding in 1641 'by reason of the greate disorder which was feared to be amongst the souldiers': *North Riding quarter sessions records*, vol. 4, ed. J.C. Atkinson, p. 187.
4. BL, E.116 (31), E.107 (12), E.114 (36); Clarendon, *The history of the Great Rebellion and Civil Wars in England*, ed. W.D. Macray, vol. 2, pp. 284-87; *CJ*, vol. 2, pp. 682, 685-86; *LJ*, vol. 5, p. 303.
5. It is difficult to be precise about the East Riding due to lack of quarter sessions records for the pre-war period: above, pp. 42-43.

judicial activity was at an end.⁶ It was not until after Rupert's defeat at Marston Moor in July 1644, and the surrender of Royalist garrisons at York, Pontefract, Scarborough, Sandall and Bolton over the next eighteen months that the institutions of local government were gradually revived. The first post-war assizes were held at York Castle on August 10, 1646.⁷ North Riding magistrates had resumed their sittings the previous year when four JPs came together at Easter.⁸ At what point West Riding quarter sessions began again is less certain. Indictments removed to King's Bench show that JPs met throughout 1646, and there is other evidence to suggest that they had been holding courts as early as July 1645.⁹ From the East Riding, too, there are indications of judicial activity in 1645 and 1646.¹⁰

The hiatus was longer in Yorkshire than in some other counties, but by the summer of 1646 most of the normal apparatus for dealing with crime was back in

6. *North Riding quarter sessions records*, vol. 4, ed. Atkinson, pp. 234-37. The business was of a very minor nature.
7. PRO, ASSI 47/20/6/40-47, 225-28.
8. *North Riding quarter sessions records*, vol. 4, ed. Atkinson, pp. 237-40.
9. PRO, KB 9/834, mm. 416, 421-23, 562; 9/835, m. 171; 9/836, mm. 351, 354; S.J. Chadwick, 'Some papers relating to the plague in Yorkshire'.
10. Forster, 'County government in Yorkshire during the Interregnum', p. 86. Cf. PRO, KB 9/835, m. 163. The borough court at York, which ceased meeting in January 1643, was back in operation by April 1646: YCA, F.7, ff. 175-77.

operation." For the rest of the period under review assizes and quarter sessions met regularly and with only occasional interruption.¹²

Post-war Yorkshire's commissions of the peace were also disrupted. As the institutions of county government were reconstructed following the Parliamentary triumph Royalist gentlemen either withdrew from the bench or were removed, and a number of neutrals retired to their estates and declined to serve.¹³ The result was that by 1649 the commissions for each of the Ridings were well under strength.

As Table 4.1 shows, overall there was a reduction of about a third in the number of JPs between 1638 and 1649. In the East Riding thirty-one JPs were named on a 1638 commission (excluding honorary members); by 1649

11. For example, in Essex: J.A. Sharpe, *Crime in seventeenth-century England: A county study*, p. 207; J.S. Morrill, *Cheshire, 1630-1660*, pp. 60, 91-94; Anthony Fletcher, *A county community in war and peace: Sussex, 1600-1660*, ch. 16. The Council of the North, of course, had been abolished, and the ecclesiastical courts had also disappeared (although they were, unlike the Council, to reappear at the Restoration). Lack of documentation prevents any assessment of the scale of the disruption of manor courts, but see above, pp. 108-21 and Sir Thomas Lawson-Tancred, *Records of a Yorkshire manor*, p. 11, for snapshots of the local impact.
12. Assizes were again disrupted during the Second Civil War when the Summer sitting had to be postponed until September. West Riding quarter sessions were similarly disrupted in 1648: the Leeds meeting dealt with very little business and the Rotherham one was abandoned: WYRO, QS 4/2, f. 56. The Lent 1659 assizes and the summer 1660 meeting of West Riding quarter sessions were abandoned owing to the uncertain political climate.
13. Forster, 'County government in Yorkshire during the Interregnum', esp. pp. 100-4.

TABLE 4.1
Size of commissions of the peace, 1638-1649

	1638	1647	1649
East Riding	31	30	23
North Riding	38	32	23
West Riding	47	46	31
TOTAL	116	106	76

- NOTES: 1. These figures exclude honorary members of the commission - officers of state, local magnates, assize judges, etc.
2. The figures are derived from the names on the commission (or *nomina ministrorum*) on the day it was drawn up and do not take into account subsequent additions or removals in that year.

SOURCES: PRO, ASSI 44/3 (*nomina ministrorum*, Lent 1647 and 1649); SP 16/405, ff. 19-24.

the number had fallen to twenty-three. In the North Riding in 1649 only twenty-three working justices were listed compared with thirty-eight a decade earlier. A *nomina ministrorum* of March 1647 lists forty-six JPs in the West Riding (excluding honorary members); two years later there were thirty-one.

However, these figures convey an inflated impression of the commissions' numerical strength. There was a certain amount of 'doubling up' in that some men were named to commissions for more than one Riding. For example, there were four men listed as West Riding justices in 1649 who were not resident in the Riding, and who seem to have played little or no part

TABLE 4.2

Distribution of JPs in the West Riding, 1638-1649

<i>Wapentake</i>	<i>n.</i> 1638	<i>n.</i> 1647	<i>n.</i> 1649
Agbrigg	5	2	2
Barkston Ash	2	2	2
Claro	10	6	4
Ewcross	0	0	0
Morley	4	5	2
Osgoldcross	0	7	3
Stafforth	3	7	5
Skyrack	4	5	4
Staincliffe	2	3	1
Staincross	5	2	2
Unknown	6	2	2
TOTAL	41	41	27

NOTE: The figures include only JPs living in the West Riding. Those resident in other parts of the county have been excluded. In 1647 there were five JPs, living in the other two Ridings or in York or the Ainsty; in 1649 there were five.

SOURCES: As in Table 4.1 with additional material from J.T. Cliffe, *The Yorkshire gentry*; Sir William Dugdale, *Visitation of Yorkshire, with additions*, ed. J.W. Clay; PRO, ASSI 45/1/2-5/7.

in its crime control.¹⁴ This left twenty-seven resident magistrates, from whom further subtractions must be made: six JPs were in service with the army in 1649, and even if the rest were willing and able to act, it left only twenty-one to serve a region whose population was somewhere between c.176,000 and c.220,000.¹⁵ To put it another way: approximately one JP for every 8,000-10,000 of the population.

14. Sir William Strickland, Sir John Bouchier, Sir Thomas Viddrington and Thomas Hoyle: PRO, ASSI 44/3 (*nomina ministrorum*, Lent 1649).

15. The West Riding JPs with the army were: Sir John Bouchier, Charles Fairfax, William Whyte, John Lambert, John Bright and John Mauleverer: PRO, ASSI 44/3 (*nomina ministrorum*,

Nor were magistrates evenly distributed (Table 4.2), owing to the difficulty in finding enough suitable men willing to serve. The populous West Riding wapentake of Agbrigg had only two resident JPs in 1647 whereas Osgoldcross, with fewer inhabitants, had seven.¹⁶ In geographical terms, too, distribution was far from uniform: in 1649 the huge area covered by the fells and dales of Staincliffe and Ewcross had only one magistrate, while the more compact wapentakes of Barkston Ash and Morley had two each.¹⁷

The fall in the commissions' size was matched by a decline in the social status of their members, something noted above in the parish context.¹⁸ As Table 4.3 demonstrates, the comparatively low social status of Interregnum JPs was not confined to places like

(n, 15 cont.)

Lent 1649). Of the thirty East Riding JPs named in a *nomina ministrorum* of 1647 five were recorded as being in Parliament, five were ill and one had not been sworn. Nine of the thirty-two North Riding JPs listed in the same document were in Parliament and another was ill: ASSI 44/3 (*nomina ministrorum*, Lent 1647). The demographic data is based on figures in J.D. Purdy, 'The hearth tax returns for Yorkshire' - see above, p. 23.

16. The populations were 23,237 and 12,991 respectively (based on Purdy, 'The hearth tax returns for Yorkshire', pp. 232, 272 (multiplier: 4.75)). Although JPs' work out of sessions was based on their 'divisions' (that is, the wapentakes in which they lived), this is not, of course, to imply that they were unable to cross wapentake boundaries.
17. In 1647 the resident magistrate serving Staincliffe and Ewcross was William Lister of Thornton: PRO, ASSI 44/3 (*nomina ministrorum*, Lent 1647); in 1649 it was John Lambert of Calton: ASSI 44/3 (*nomina ministrorum*, Lent 1649).
19. Pp. 110-11.

TABLE 4.3

Composition of West Riding commission of the peace,
1638-1647

Rank	1638	1647	1649
Peers	1	1	0
Baronets	4	1	1
Knights	18	7	3
Esquires	18	32	23
Clergy	1	0	0
TOTAL	41	41	27

NOTE: Figures include only JPs resident in the West Riding (see note 1, Table 4.2).

SOURCES: As in Table 4.1.

Halifax; it was the norm. By 1649 mere esquires accounted for 85% of the West Riding bench (compared to 44% in 1638). And in the East Riding in the same year all but one of the JPs belonged to the squirearchy (in 1638 there had been four baronets and six knights).¹⁹

The Civil War also signalled the onset of an unsettled period for urban government stemming largely from interference by the military. Corporations complained bitterly about the high-handedness of their treatment by soldiers. At York, during the Royalist occupation, when aldermen opposed the Earl of Newcastle's intervention in mayoral elections, they were curtly informed that 'since it is his majestie's pleasure itt will become all to submitt to itt'.²⁰ At

19. PRO, ASSI 44/3 (*nomina ministrorum*, Lent 1649) and SP 16/405, ff. 19-24.

20. Robert Davies, 'An episode in the municipal history of the city of York'; VCH, *City of York*, pp. 175-76.

Parliamentarian Hull things were no better. The aldermen denounced:

'the heavy burden of Sir John Hothom, his tirannicall government, whose will was the rule of all his acctions, and by whose power all the libertys of this poore Corporation was trampled under foote.'²¹

Instability persisted into the Interregnum when purges took place in the corporations of York, Beverley, Pontefract and Leeds.²² Renewed quarrels broke out between the military and civilian interest. At Hull these were compounded by a clash between the Fifth Monarchist deputy-governor, Colonel Robert Overton, and religious conservatives on the bench.²³ Elsewhere, the legislation of 1647 and 1649-1650, which disqualified ex-Royalists from holding office, provided competing groups with the means to discredit enemies: moves were made to displace delinquent aldermen at York, Pontefract and Doncaster.²⁴

21. *The Hull letters*, ed. T.T. Wildridge, p. 37.
22. *CJ*, vol. 4, p. 80; *VCH, City of York*, p. 176; *VCH, East Riding*, vol. 1, pp. 103-6; *Book of entries of the Pontefract corporation, 1653-1726*, ed. R. Holmes, pp. 9-10; J.W. Kirby, 'A Leeds elite: The principal burgesses of the first Leeds corporation', pp. 103-4; *Beverley borough records*, ed. J. Dennett, pp. 48-49; 102-4; *PRO, SP 24/47* (Fitzwilliam vs. Cooke, petition of Thomas Fitzwilliam, July 9, 1650).
23. *The life of Master John Shaw*, pp. 140-45, 422-23; *VCH, East Riding*, vol. 1, pp. 105-9.
24. *Acts and ordinances of the Interregnum, 1642-1660*, vol. 1, ed. C.H. Firth and R.S. Rait, pp. 1009, 1023; vol. 2, pp. 620-21. *PRO, SP 24/65* (Moore vs. Beale, articles against Paul Beale, July 9, 1651); 24/65 (Moore vs. Scurr, petition of Edward Moore, July 9, 1651); 24/47 (Fitzwilliam vs. Rasin, petition of Robert Fitzwilliam, February 17, 1652); 24/44 (Deane vs. Oates, petition of Edward Deane, November 29, 1653); 24/10, ff. 13v, 18v, 93, 119.

These efforts failed, however, and by the early 1650s the institutions of county administration were looking healthier. Urban government recovered, and the shortage of JPs was soon made good. In the West Riding 110 men were appointed to the bench between 1649 and 1660. In the East and North Ridings there were eighty-one and seventy-one appointees respectively, enough to bring numbers up to pre-war levels.²⁵

The dislocation of county government, therefore, was essentially short-term. But the difficulties facing the authorities should not be under-estimated. There were serious problems: one of the most pressing was the emergency created by the deteriorating economic climate.

II

In Yorkshire the later 1640s were hard years, remembered by one contemporary as a time when 'the pain was on the country', and by another as 'the dear years'.²⁶ The West Riding's economic mainstay, the

25. Forster, 'County government in Yorkshire during the Interregnum', pp. 100-4.

26. PRO, ASSI 45/3/1/118; 45/3/2/50. The economic disruption of the 1640s may also have owed something to population movement. Its scale is uncertain but there is evidence to suggest that during 1643-1644 many pro-Parliament families sought refuge in neighbouring counties, especially Lancashire and Cheshire. James Nayler of Gomersal was one: in 1643, the Earl of Newcastle 'having the command then ... [he] was forced to leave the county with his family': SP 24/66 (Nayler vs. Batt, petition of James Nayler, February 20, 1650). Cf. 24/37 (Bray vs. Haigh, petition of Philip Bray, May 16, 1649. Bray 'with diverse other well-affected persons were by forces raised against the Parliament driven

textile industry, had been among the first casualties of the Civil War. Already depressed in 1640, it came to a virtual standstill once the campaigning got under way.²⁷ As Sir Thomas Fairfax informed his father from Bradford in January 1643, 'all trade and provisions are stopped, so that the people in these clothing towns are not able to subsist'.²⁸ It was no exaggeration. The plight of the textile region spurred on the Fairfaxes to their disastrous confrontation with Newcastle's superior forces in the spring and early summer of that year.

Their defeat had important economic consequences, not least for Hull, the chief port handling West Riding kersies. The Royalist supremacy in Yorkshire after Adwalton Moor effectively severed Hull's trade links with the cloth-producing areas. The economic life of the port was further disrupted by the destruction of property during the fighting and in the course of

(n, 26 cont.)

from their habitations did flee' to Cheshire); 24/53 (Hesleden vs. Aynsworth, petition of Michael Hesleden, June 6, 1649); 24/55 (Holdsworth vs. Barraclough, petition of Robert Holdsworth, September 7, 1649); T.W. Hanson, 'Halifax parish church, 1640-1660', p. 51; *The memoirs of Captain John Hodgson*, ed. J.H. Turner, p. 25.

27. Some clothiers, however, managed to carry on business. Jonathon Priestley, *Memoirs concerning the family of the Priestleys*, p. 23, recorded that his brother 'bought cloth; travelled to London with 8 or 9 horses all the time of the Civil Wars; sometimes he and others that was with him hired convoys, sometimes went without, and were never taken, he or his horses or goods, all that dangerous time ... [he] spent 20l. every journey, and got 20l. clear every journey; he got 400l. in those times.'
28. *Memorials of the Civil War: Comprising the correspondence of the Fairfax family*, vol. 1, ed. R. Bell, p. 33.

preparations to withstand besieging the forces.²⁹ By 1645 conditions had reached such a point for the corporation to warn that:

'by their decay of traid, continuall making and replairling of fortifications, their constant chardge in watching and warding the Towne, and their insupportable losses at Sea (by Pyrates or otherwise); ... [the] Towne is utterly disabled of itself'.³⁰

Everywhere the unemployment and poverty that resulted from the fall in trade were made worse by plundering armies and by the taking of free quarter.³¹ According to the inhabitants of Cleveland, who petitioned quarter sessions in January 1647 that the Scottish army had levied £4,000 per month in money and provisions, 'some ... have neither oxen left to till the Ground, nor Seede to sowe the same withall'. It was only one of a host of similar complaints.³²

Disease also took a hand. In May 1645 'a heavy

29. 'Accounts of Lord General Fairfax', p. 240.

30. *The Hull letters*, ed. Wildridge, pp. 49, 70-71. Cf. PRO, SP 18/16/11; 18/23/36; 18/24/107; ASSI 45/3/2/42; 45/4/1/136-39; VCH, *East Riding*, vol. 1, p. 138; R. Davies, *The trade and shipping of Hull*, pp. 23-25.

31. In December 1642 Ferdinando Fairfax, faced with problems in paying his troops, was reluctant to permit free quarter, describing it as 'a cure, in my conception, as dangerous as the disease': *Memorials of the Civil War*, vol. 1, ed. Bell, p. 28.

32. Zachary Grey, *Examination of the third volume of Neal's history of the Puritans*, pp. 43-44. In 1645 William Viscount Fairfax of Emley was contemplating falling rents due, his tenants maintained, to 'the assessments paid to the armies, and free billet, and freebooting, [which] had so impoverished them, that they were scarce able to pay anything': *Memorials of the Civil War*, vol. 1, ed. Bell, pp. 209-211. Cf. Binns, 'Scarborough and the Civil Wars', p. 118.

visitation of plague and pest' was recorded at Leeds, and the town was soon unable to 'relieve the poorer sort'. By September about eighty West Riding towns and villages were infected, including Wakefield, Dewsbury, Tadcaster, Wetherby, Ripon, Keighley, Pontefract and Doncaster.³³ At Halifax the arrival of plague in August signalled the onset of a severe, though short-term, mortality crisis.³⁴ And at Wakefield, in the twelve months from August 1645, the deaths of 245 people were attributed to the disease.³⁵ The epidemic abated, but it was followed by heavy rains and floods that spoilt successive harvests and inflated bread prices.³⁶

The condition of the county in November 1645 had been evocatively summarised by Sir Thomas Mauleverer in

33. Chadwick, 'Some papers relating to the plague in Yorkshire'; *Memorials of the Civil War*, vol. 1, ed. Bell, pp. 303-6; HMC, Portland MSS, vol. 1, p. 303.
34. WYRO, D 53/5 (August-October 1645). Cf. H.P. Kendall, 'The plague in Halifax parish', and 'Sowerby constables' accounts', part 1.
35. J. Walker, *Cathedral church of Wakefield*, p. 306. In other parts of the county there were outbreaks of plague and typhus at this time. Population loss was not confined to the West Riding. There was a substantial fall in Scarborough's population (noted by Binns, 'Scarborough and the Civil Wars', p. 118). At Hull typhus struck in 1643 and reached epidemic proportions in 1644. The following year plague struck, although mortality rates were not significantly affected: VCH: *East Riding*, vol. 1, pp. 156-57. In the North Riding, Richmond, in 1645, was 'shutt up, for the plague was exceeding great there': R. Fieldhouse and B. Jennings, *A history of Richmond and Swaledale*, p. 105.
36. It was a nation-wide phenomenon: W.G. Hoskins, 'Harvest fluctuations and English economic history, 1620-1759', esp. pp. 18, 20-21. Sir Henry Slingsby noted in his diary, 'in ye year 1648 there hapn'd great flouds as seldome hath been known, whilch carry'd away much Hay; & where it was not cut, it so floud'd ye Grass, yt it could not be cut at all': *The diary of Sir Henry Slingsby of Scriven*, ed. D. Parsons, p. 185.

a letter to Speaker Lenthall: 'the life-blood of the poor countryman's estate is now drawing out,' he wrote, 'the little remainder of the oil in the cruse, and of the meal in the barrel is now spending ... The country lies under inevitable ruin'.³⁷ By 1648-1649 it must have seemed as if the ruin had arrived. News of deepening poverty came in from all quarters, and the authorities noted an alarming increase in vagrancy and begging. Wanderers were found lying dead on the wayside, and 'dearth and deadness of trading' was widely reported.³⁸

As Forster has shown, JPs met this crisis energetically. They resurrected the pre-war system of poor relief, supervised the distribution of doles and inspected overseers' accounts. They took active steps to prevent the spread of pestilence and levied extra monies for the relief of afflicted towns. They reactivated the controls designed to maintain economic stability, prosecuting middlemen for engrossing, forestalling and fraudulent weights and measures;

37. HMC, Portland MSS, vol. 1, p. 303. The Yorkshire committee had the previous month informed Parliament of the county's exhaustion, 'we have not merited to be designed out to Destruction, nor that we only should mourn at this present, when all England, by God's mercies, hath such Occasion to rejoyce': *LJ*, vol. 7, p. 642.
38. CDA, 'OLP' 15; WYRO, D 53/5 (1649); *Proceedings of the Commonwealth committee for York and the Ainsty*, ed. A. Raine, p. 21. This was part of the 1649 'famine' in the northern counties which had its greatest impact in neighbouring Cumberland and Westmorland where JPs reported that 'the poorer sort are almost famished, and some really so ... [many] have died in the highways for want of relief': *Seventeenth-century economic documents*, ed. Joan Thirsk and J.P. Cooper, pp. 51-52.

clothiers for 'excessive tentering, illegal resort to the hot press and the use of inferior wool'. At the height of the dearth, 1649-1650, they prosecuted large numbers of men for unapprenticed trading. They also cracked down on vagrants and squatters or 'undersettlers', and, in the West Riding, ordered the execution of one man indicted as an incorrigible rogue. This was an unusually severe step for seventeenth-century magistrates, and was undoubtedly influenced by their determination to prosecute the officially sanctioned campaign against vagrancy, part of the instinctive administrative reflex to dearth.³⁹ JPs had also to deal with a comparatively high level of prosecutions for property crime. The relationship between this and the dearth is explored in Chapter Six.

All this consumed valuable time, and predictably, with the bench so short-staffed, there were complaints that the country is much prejudiced for want of execution of justice', as the judges at York put it in 1647.⁴⁰ Or, as a petitioner told the indemnity committee in May 1650, he:

'did earnestly solicit the justices of peace for the ... West Riding of the county ... to examine witnesses in a cause depending before the honourable committee ... [but] could not prevail with the said justices of peace to examine his said witnesses by reason they had so much country business as they alleged.'⁴¹

39. 'County government in Yorkshire during the Interregnum', pp. 90-93; WYRO, QS 4/2, ff. 45-45v.

40. PRO, ASSI 47/20/6/35v.

41. PRO, SP 24/66 (Mayler vs. Batt, affidavit of John Marsh, May 30, 1650).

There were other reports in the same vein.⁴² But they must be weighed against the fact that assize and quarter sessions calendars were at their heaviest (Tables 2.2 and 2.3) at precisely the same time that JPs were fewest. What appears to have happened was that a handful of energetic justices compensated for lack of numbers. Thus Henry Tempest of Tong was certifying depositions in large quantities during the later 1640s when he was one of a fairly small band of active magistrates, and much fewer in the 1650s, by which time there were more men available to shoulder the judicial and administrative burden.⁴³ Although it caused inconvenience to some complainants and may have deterred others from undertaking prosecutions, the shortage of JPs had a relatively limited impact on the ability of victims to go to law.

42. In another case before the indemnity committee it was reported, again in 1650, that one JP to whom a commission to examine witnesses had been directed could not be found because he was in service against the Scots: PRO, SP 24/7, f. 42. Some witnesses were unable to find any JPs at all: Thomas Summer, a tailor from Thorpe in the West Riding, discovered a coiner at work in March 1646 but did not report it, 'there being no justices then to whom he could repair with any complaint': ASSI 45/1/5/19. There are also signs of confusion among JPs about whether they were legally still members of the commission. When Henry Appleby was apprehended for felony and sent to North Riding magistrates Sir Thomas Layton and John Dodsworth for examination in 1645, they 'refused to meddle with him, conceiving at that time their authority to be suspended, and he was set at liberty': ASSI 45/1/5/3.
43. Between his appointment to the bench in 1646 or 1647 and his death in 1658 (above, pp. 110, 114n.) Tempest certified sixteen in 1647, eleven in 1648, seven in 1649, three in 1650, four in 1651, six in 1652, two in 1653, two in 1654, one in 1655, none in 1656 and 1657, and three in 1658: PRO, ASSI 45/2/1-45/5/5 and 44/3-44/6, *passim*.

A much more serious consequence of the dislocation of local government during the 1640s was that it occupied a weak position from which to confront the mounting threat posed by the military. For even once the deliberately inflated character of much of the evidence relating to the illegal activities of soldiers is taken into account, the impression left is of widespread military lawlessness in Yorkshire between the late 1630s and early 1650s.⁴⁴ Its suppression became the over-riding priority of those responsible for crime control. More will be said about military criminality in later chapters. Here, the aim is to explore its origins and the steps taken to deal with it in the context of a temporary breakdown in local government.

III

The first murmurings against the army were heard soon after the trained bands, marshalled to oppose the Covenanters, assembled in the county during the spring of 1639.⁴⁵ They emanated from propertied men, like Sir

44. Petitions and broadsheets in particular: for example, J. Rushworth, *Historical collections*, vol. 3, p. 1214; PRO, SP 16/464/82; *Fairfax correspondence*, vol. 2, ed. G. Johnson, pp. 367-72; G. Duckett, 'Civil War proceedings in Yorkshire', pp. 385-86 ('Horrible news from Hull'); BL, E.50 (14), E.365 (9).

45. According to Slingsby the king's forces in the north numbered at least 30,000 in 1640, 12,000 of which belonged to Yorkshire's trained bands: *The diary of Sir Henry Slingsby of Scriven*, ed. Parsons, p. 60.

Henry Slingsby of Scriven, and initially focused on damage to farmland, hedges and woods.⁴⁶

Very quickly the murmurings rose to a clamour and became graver in tone. By early 1641 soldiers were openly defying both their officers and civilian magistrates. At the village of Seamer in February 1641 Roger Wivell, a North Riding JP, was set upon and wounded by a group of soldiers after he had intervened to stop them attacking a civilian. Wivell sent a full report to Sir John Conyers, deputy of the Lord General, the Earl of Northumberland, adding that soldiers in the area had also been responsible for highway robberies, attempted rape and threatening arson.⁴⁷ Conyers, already frantic over allegations of his troops' misconduct, had earlier told Northumberland that discipline was on the point of total collapse.⁴⁸

The episodes recounted by Wivell were far from isolated. There were reports of similar events from all over the county between the summer of 1640 and the following spring. At Selby in June 1640, for example, soldiers killed one of their officers, broke open the

46. Soldiers encamped near Scriven 'lay all wast about ym & makes a destruction of wood & hedges; so yt ye owners of it shall make little or nothing of it': *The diary of Sir Henry Slingsby of Scriven*, ed. Parsons, p. 61. Cf. *The Fairfax correspondence*, vol. 2, ed. Johnson, p. 200.

47. PRO, SP 16/477/54.

48. PRO, SP 16/476/47; HMC, Egmont MSS, vol. 1, pp. 132-33.

prison and did 'great mischief'.⁴⁹ At Wakefield they attacked the house of correction and smashed its windows.⁵⁰ A trooper who galloped through Cottingham firing his carbine shot and killed a villager, apparently by accident.⁵¹ But there were more malicious incidents. Troops and civilians clashed at Northallerton (where several soldiers were held in custody for 'great robberies and mischief to the country people'), and at Tong, Richmond, Pickering, Ripon, Beverley, Howden, Stockton, Rotherham, Doncaster and York.⁵² There were so many complaints from the area around Pocklington about the depredations of men from Lord Carnarvon's troop that Conyers decided it would be best to billet them elsewhere.⁵³ Court records for the years 1640-1642 reveal that soldiers stood trial for murder, highway robbery, burglary, and the theft of horses, sheep and poultry.⁵⁴

With the settlement of pay arrears beginning in July 1641 the situation improved, and once the army was

49. PRO, SP 16/458/62; 16/463/41.
50. WYRO, QS 10/1, f. 125v; CDA, SPL:143 (accounts of Richard Bentley, entry dated August 29, 1640).
51. PRO, ASSI 45/1/3/22; SP 16/459/97; 16/460/43.
52. YCA, F.7, f. 104; PRO, SP 16/452/39; 16/459/64; 16/460/40; 16/468/85; 16/473/87; 16/476/2; 16/452/33.
53. PRO, SP 16/477/54.
54. A special commission of oyer and terminer was granted to leading gentry in 1641 to bring military offenders to trial: Anthony Fletcher, *The outbreak of the English Civil War*, p. 20. For the general condition of the king's forces in the north: S.R. Gardiner, *The history of England, 1603-1642*, vol. 9, pp. 10, 152, 158-61.

disbanded in the summer and autumn of that year there was a return to more settled conditions.⁵⁵ However, it was no more than a temporary respite: as the political crisis deepened over the next twelve months, there were renewed outbreaks of military disorder, although more localised and on a smaller scale than before. In one of the more serious incidents, in June 1642, the house of Puritan alderman John Vaux at York was besieged by sixty soldiers of Sir Robert Strickland's regiment, 'with diverse Cavaliers'. They 'broke all his windowes, puld up the two great posts at his doore, ... [and] would needs have had the Alderman, to have torne him'.⁵⁶ The most celebrated case involved a robbery in early August at the house of George Marwood of Nun Monkton, a Puritan squire recently displaced from the commission of the peace. A band of Lord Carnarvon's newly-reformed troop abused and threatened Marwood's wife before making off with money, plate and arms.⁵⁷

With the outbreak of hostilities the situation inevitably underwent a drastic deterioration. Yorkshire had strategic and economic importance to both sides,

55. PRO, SP 16/482/23; 16/483/61; 16/481/1-2; LJ, vol. 4, p. 375; Rushworth, *Historical collections*, vol. 5, p. 378. In a letter to Ferdinando Fairfax dated July 12, 1641 Stockdale wrote that three regiments had been disbanded and more were to follow soon. 'The long desired calm of peace in these parts', he wrote, 'now begins at length to appear ... The soldiers begin now to be better ordered': *The Fairfax correspondence*, vol. 2, ed. Johnson, p. 208.
56. Duckett, 'Civil War proceedings in Yorkshire', pp. 75-76; PRO, SP 16/491/21.
57. At around the same time Sir Henry Cholmley's house was plundered by soldiers: Fletcher, *The outbreak of the English Civil War*, p. 328.

and large armies were raised."⁵⁸ These were often incompetently officered, badly provisioned and ill-disciplined. Propagandists did not have to search far for their material."⁵⁹ 'It was observed by some', wrote Captain John Hodgson, a soldier for Parliament, about the advance of the Royalist commander in the county, the Earl of Newcastle, 'that the land was like Eden before him, and behind him a barren wilderness'.⁶⁰ This is obviously exaggerated, but it is not without a kernel of truth. Reports of military outrages from more dispassionate sources were numerous: they were of villages razed, towns plundered, houses looted, crops systematically destroyed and civilians murdered.⁶¹

58. The Royalist forces led by the Earl of Newcastle at Adwalton Moor (June 30, 1643) numbered c.19,000, those of the Fairfaxes c.4,000: HMC, Portland MSS, vol. 1, pp. 717-9; C.V. Wedgwood, *The king's war, 1641-1647*, p. 209. At the height of the conflict, during the siege of York in the summer of 1644, there may have been as many as 50,000 men under arms in and around the city: Peter Wenham, *The great and close siege of York, 1644*, p. xi. C.H. Firth, 'Marston Moor', pp. 23-30, puts the figure at c.43,000. Taken together with the numerous local forces and garrisons the proportion of men under arms in the county (in 1644 at least) may have been as high as one-sixth of the population.
59. For example, BL, 50 (14), a pro-Parliament tract which described Royalist forces in Yorkshire as 'tigers and bears for cruelty, boars for waste and devastations, swine for drunkenness, goats and stallions for lust ...'.
60. *The memoirs of Captain John Hodgson*, ed. J.H. Turner, p. 24.
61. BCA, Spencer Stanhope MSS, 10/13; CDA, HAS/B:22/23/2-3; Edward Peacock, 'Civil War documents relating to Yorkshire', pp. 97, 101-3; Nathan Drake, *A journal of the first and second sieges of Pontefract*, pp. 21, 26, 48; Priestley, *Memoirs concerning the family of the Priestleys*, pp. 9, 17-18; *The autobiography of Mrs. Alice Thornton*, pp. 38-39, 43; Duckett, 'Civil War proceedings in Yorkshire', part 1, pp. 63-69, part 2, 369-400; H.P. Kendall, 'The Civil War as affecting Halifax the surrounding towns', pp. 34-35; *The life of Master John Shaw*, pp. 136-37; *A history of Helmsley*,

Conditions eased with the cessation in 1644-1645 of large-scale military operations. However, as Chapters Five and Six show, serious crime committed by soldiers was a prominent feature of the later 1640s and early 1650s. But while military disorder was pinpointed by the authorities as a major area of concern, they were unable to stamp it out. There were two reasons for this: the continuing weakness of county government, and a degree of jurisdictional rivalry.

Delinquent soldiers could be tried by court martial or brought before the common law courts. Before the Civil War the latter was generally the preferred course since it avoided the legal and constitutional tangle spun by the Petition of Right. It was also the one on which the civilian authorities, anxious to retain some semblance of control over the military, tended to insist. On the other hand, officers, confronted with an unruly army, needed a speedy weapon at their disposal, and they were not always prepared to wait for the next meeting of assizes. Moreover, there was some resentment among commanders at civilian interference in military discipline. Whatever the complications, officers often sought to exclude the courts and relied on their own tribunals. However, their powers of martial law were often ambiguous.

(n. 6) *cont.*)

Rievaulx and district, ed. J. McDonnell, pp. 158-59; George Poulson, *The antiquities and history of Beverley*, vol. 1, pp. 363-63; J.W. Ord, *The history and antiquities of Cleveland*, pp. 601-2; 'Sufferings of Arthur Catterall'.

Between 1639 and 1641 confused officers complained that they lacked the means 'to do justice'.⁶² Similar complaints were heard during the later 1640s. In 1648, for example, Sir Henry Cholmley wrote to Parliament with news of outrages committed by soldiers under his command which, he added pointedly, he had been unable to punish because he did not have powers of martial law.⁶³

In the immediate post-war period disciplinary problems intensified. The army did move against some offenders, and made orders for the 'better redressing of Grievances of the country, and Disorders of the Soldiers, which', it was promised, 'will be suddenly punished'.⁶⁴ But three serious mutinies in the Northern Army between 1645 and 1647 undermined officers' morale

62. PRO, SP 16/477/54. There was considerable uncertainty among commanders about how to proceed against offenders, as their repeated requests for clarification indicate: SP 16/451/54; 16/452/39; 16/458/62. In June 1640 Viscount Conway was informed by Northumberland that legal opinion was that martial law was unlawful except when the army was drawn together in a body: SP 16/457/104. Matters were not clarified until July 1640 when Conway, who as commander of the horse had already executed some mutineers, secured the power to impose martial law at his discretion, and was thus assured that he could 'now hang with more authority': Gardiner, *The history of England, 1603-1642*, vol. 9, p. 152; SP 16/461/16.
63. Zachary Grey, *Examination of the third volume of Neal's history of the Puritans*, p. 66.
64. This order was made at a council of war held at York in December 1647. Several soldiers were punished by the same council, including an officer who was shot for murder: Rushworth, *Historical collections*, vol. 7, pp. 931-32. For other references to the army taking action against delinquent soldiers, sometimes in co-operation with the common law courts, during the 1640s: PRO, SP 16/458/46; 16/476/2; 16/477/54; 16/479/19; 18/2/44; ASSI 45/2/2/225-26; Poulson, *The antiquities and history of Beverley*, vol. 1, pp. 353-54.

and capacity to control their men. To quote J.S. Morrill: 'The Yorkshire forces [were] among the most restive and mutinous in the kingdom.'⁶⁵

In the absence of effective military discipline it was left to the civilian authorities to take action. But there were impediments. Soldiers, armed and assembled in large numbers, did not hesitate to use force against constables and other officers. According to Thomas Stockdale, the soldiers 'did so overawe the civil subject, as [the country people] durst not complain of their sufferings'. He described the 'insolency' of one company in the Knaresborough region:

'[They] do not only abusively use all persons whatsoever, and beat, affront, and vilify them; but also by stealth, and by open force and robbery, they take all men's goods ... no man ... dares now complain, nor resist the soldiers doing him wrong. And for searching for stolen goods, no man dare attempt it; for the soldiers beat both constables and proprietors that offer to search.'⁶⁶

But it was not just the soldiers' might that made policing the army difficult. The problem was exacerbated by the uncertain position of the county

65. On one occasion the Northern Army's general, Sydenham Poyntz, and the Lord Mayor of York were arrested by mutineers; on another sequestrators were seized and held for ransom: J.S. Morrill, 'Mutiny and discontent in English provincial armies, 1645-1647', pp. 69-70 and passim. Cf. BL, E. 398 (6), (11); *Clarke papers*, vol. 1, ed. C.H. Firth, pp. 142-47, 163-69; HMC, Portland MSS, vol. 1, pp. 240-41, 252, 254, 294.
66. *The Fairfax correspondence*, vol. 2, ed. Johnson, pp. 203-4. Stockdale was speaking of 1640-1641, but his comments are equally applicable to the later 1640s: below, pp. 196-200, 202-3, 227, 240-46, 249-50. Cf. PRO, ASSI 45/2/1/233.

administration in the immediate aftermath of the war. Its instability enabled some military commanders to ignore or actively resist the civilian authorities in their attempt to curb the troops' excesses. The growing animosity between the civilian and military interest came to a climax during 1645-1646 in the south Yorkshire town of Tickhill, and it centred on the activities of the Scottish army.

By the time of the Tickhill events the Scots were already deeply unpopular in Yorkshire. Stories circulated of their brutality towards the populace, their exactions and wanton destructiveness: 'It would mollify an adamant heart', was the claim of one newsheet of the time, 'to hear the bitter complaints and rueful moans that are echoed out of every quarter.'⁶⁷ But the Scots had a defence. From the time of their advance into the county to invest York they repeatedly maintained that they were being starved of provisions. In September 1644 the Yorkshire gentry declared they were unable to pay the monthly assessment of £31,000 for the army, which confirmed Scottish suspicions that supply was deliberately being withheld.⁶⁸ In these circumstances commanders had no option but to permit their men to take by force what

67. BL, E.365 (9).

68. *CJ*, vol. 3, p. 602; *Correspondence of the Scots commissioners in London, 1644-1646*, ed. Henry Meikle, pp. 35-36; HMC, Portland MSS, vol. 1, p. 301. Cf. Lawrence Kaplan, *Politics and religion during the English Revolution: The Scots and the Long Parliament*, ch. 3, for the quarrel in its national context.

they needed. A showdown was avoided only when the Scots left the county at the end of 1644. However, in the summer of the following year, to the dismay of the population, they suddenly returned.⁶⁹ The old problems reappeared and in Tickhill resulted in a clash between the army and the population. This led to a confrontation between the civilian government and the military establishment.

Scottish troops belonging to General Jonas Vandruske's regiment were quartered in the Tickhill-Doncaster area in the summer of 1645 and spring of 1646, and quickly established a reputation for systematic brutality. They were accused by local people in a document entitled *Tortures at Tickhill*, which named more than a hundred offenders, of a series of crimes including rape, assault and extortion.⁷⁰ Representations were made to the committee at York and to the Scottish commissioners in London who had earlier professed themselves 'exceedingly greived and ... ashamed' at similar reports.⁷¹ They had urged officers 'to punish severely the authors of such insolencies and disorders'. No such action was taken, however, and the civilian administration, undermanned and overburdened, was powerless to enforce the law. With no prospect of

69. *Correspondence of the Scots commissioners in London, 1644-1646*, ed. Meikle, p. 125n.

70. Grey, *Examination of the third volume of Neal's history of the Puritans*, pp. 44-50, 56-59; *LJ*, vol. 7, pp. 642-43.

71. *Correspondence of the Scots commissioners in London, 1644-1646*, ed. Meikle, pp. 125, 128.

redress the townspeople took matters into their own hands.⁷² They seized and imprisoned the soldiers in nearby Pontefract Castle, and sent the prisoners' names to the county committee.

When, in turn, the committee at York wrote to tell the Scottish commanders of developments a fierce quarrel broke out. General Alexander Leslie, Earl of Leven, stressed that the arrested men came under his jurisdiction and were subject to military law. Further, he insisted that the townspeople be punished for the insult they had paid to him in taking his soldiers into custody. There was a furious correspondence over the next few weeks.⁷³ In the end, after much pressure, Leven agreed to a court martial. This apparent triumph for the local administration was soon revealed to be hollow. At the last minute the officers changed the venue and witnesses were prevented from giving evidence. One soldier was executed, but as embittered local people pointed out, it was for desertion and not for any crime committed against the population. To add insult to injury, officers acquitted a soldier of rape, declaring that an order to submit from the girl's father (who was himself threatened with death by the

72. In some parts of the county where the Scots were quartered 'vulgar clubb associations' had sprung up: *Correspondence of the Scots commissioners in London, 1644-1646*, ed. Meikle, p. 125. It is not clear whether the Tickhill people part of such an association.

73. Grey, *Examination of the third volume of Neal's history of the Puritans*, pp. 56-59; HMC, Portland MSS, vol. 1, pp. 243, 301, 338, 341, 357-58, 366, 368; *LJ*, vol. 8, p. 349.

TABLE 4.4

Soldiers tried for felony at selected York assizes,
1641-1658

<i>Crime</i>	<i>n.</i>	<i>% of total</i>
Simple Larceny		
Horses	31	13.5
Sheep	14	11.3
Other	36	8.8
Aggravated Larceny		
Robbery	18	26.9
Breaking	8	26.7
Burglary	9	9.1
<i>Property crime total</i>	<i>116</i>	<i>12.1</i>
Manslaughter	15	34.1
Murder	12	10.3
Miscellaneous	6	5.2
TOTAL	149	(13.7)

- NOTE: 1. Figures are for persons.
2. Only courts for which records are complete have been included (see Table 6.2).
3. Soldiers indicted for more than one category of offence have been counted once for each category they appear in. For example, Captain Edward Holt, tried for highway robbery and murder in 1649 appears in both the *Robbery* and *Murder* categories.

SOURCES: PRO ASSI 45/1/2-5/7; 44/1-8, 19; 47/20/1, 47/20/6. Additional material to identify soldiers has been taken from PRO, SP 24/1-17, 30-87; KB 9/817-83.

same soldier) amounted to consent.⁷⁴

Although they must be seen in the wider context of a breakdown in relations between Parliament and its Scottish allies, the Tickhill events spotlighted the impotence of the county administration. It was unable

74. Grey, *Examination of the third volume of Neal's history of the Puritans*, pp. 56-59; HMC, Portland MSS, vol. 1, p. 397.

to prevent soldiers terrorising the townspeople, and it was unable, even when the Tickhill people had taken action for themselves, to ensure that the guilty were punished. From the point of view of the magistrates and committee men, the whole episode was a humiliating failure, and it could only have strengthened their resolve to bring the military to heel. As the courts were re-established over the following months, soldiers began to be indicted in fairly large numbers (peaking in 1648 and 1649), and, as Chapter Nine argues, on the whole they received short shrift from juries and judges.⁷⁵ Unfortunately, because their identification in the legal records is inconsistent, an exact figure cannot be placed on the numbers brought to trial. Those shown in Table 4.4, identified from a range of sources, must be considered an under-estimate (they refer, in any event, only to prisoners tried at assizes: the lack of quarter sessions depositions means that soldiers indicted before the justices cannot be singled out). And since the law enforcement system had a limited capacity to identify and apprehend soldiers, whose stay in any one place might have been no more than a matter of hours, the figures necessarily represent the tip of a very large iceberg. Nevertheless, they suggest that soldiers accounted for approximately 13-14% of felons

75. See below, pp. 196-200, 202-3, 220-23, 240-47, 250-51, for further details of crime committed by soldiers in this period.

tried at York assizes, 1641-1658, and they provide confirmation of the claims about military lawlessness found in pamphlets, petitions and broadsheets.

IV

The challenge from the army was only one of several difficulties magistrates had to confront. At the height of the military disorder they were also faced with what the court archives indicate was increasing popular disturbance. The West Riding indictment books reveal a more than two-fold increase in the number of persons prosecuted for riot and similar disorders after 1647. Excluding those named on bills found *ignoramus*, a total of 2,541 persons were charged with riot, forcible disseisin, close breaking, and unlawful taking of goods between 1638 and 1665 (Table 2.3). Of these, 268 were indicted between 1638 and 1642 at nineteen sittings of the court. Over the next nineteen sittings, beginning in Easter 1647, 568 persons were arraigned.⁷⁶ Throughout the 1650s the numbers remained consistently higher than before the Civil War.

Unfortunately, the patchy survival of assize misdemeanour files means that it is impossible to say whether a similar pattern was emerging at York Castle. The lack of these records also obscures the meaning behind the quarter sessions figures: the post-war 'increase' might reflect no more than a change on the

76. Figures include cases subsequently sent to King's Bench.

part of prosecutors or justices in their choice of tribunal; that is to say that after 1647 they may have been taking these cases away from assizes to quarter sessions. Without the relevant assize files we simply cannot be sure.

However, when we look at the disturbances' origins there are reasons to suppose that the sharp rise in the volume of quarter sessions indictments after 1647 represents both a real increase in prosecutions, and an increase in the amount of large-scale disturbances in the community.

Identifying their origins, however, is not easy because there are very few depositions relating to non-felonious crime. It can be safely assumed that many 'riots' were no more than 'technical' assaults by three or more persons, which probably involved little or no actual violence.⁷⁷ Some arose out of private quarrels among the gentry and 'better sort', which typically involved litigation alleging charges of this kind.⁷⁸ To the extent that cases of this type continued to find their way into the courts, there was nothing novel or unusual about many of the post-war disturbances.

However, others were connected with the larger events of the Civil War. There is, for example, evidence of disorder arising out of popular opposition to government war taxation. There was rioting against

77. See J.A. Sharpe, *Crime in seventeenth-century England: A county study*, pp. 72-75, on this point.

78. Of the kind, for example, described by Oliver Heywood, *Diaries*, vol. 2, pp. 246, 247, 273, 286.

the excise at Leeds in 1647 and 1658.⁷⁹ And at Halifax in 1655 a group of alehousekeepers, led by a drummer, and to the sound of the church bells being tolled 'backwards', paraded through the town and assaulted three excise collectors.⁸⁰ Other large-scale disturbances were provoked by the attempted 'reformation of manners' that became a feature of Interregnum local government.⁸¹ In October 1658, for instance, twelve people from the Bingley area were indicted at quarter sessions for a riot when they resisted an attempt to suppress 'a tide or a feastday'.⁸²

There was also a good deal of reported rioting from the area of south Yorkshire that encompassed the Level of Hatfield Chase where commoners had been fighting, since well before the Civil War, a lengthy and bitter campaign in defence of customary rights. As Keith Lindley has shown, their opposition intensified during the Interregnum.⁸³ News of serious disorder in Hatfield Chase was brought to the Council of State's

79. Forster, 'County government in Yorkshire during the Interregnum', p. 90.

80. WYRO, QS 4/4, f. 166. Less serious assaults on tax collectors, involving one or two assailants, were more common: for example, PRO, KB 9/882, m. 108; SP 24/77 (Stawe vs. Barcroft, petition of William Stawe, November 28, 1651, and two others, n/d); ASSI 45/3/2/154-57.

81. Forster, 'County government in Yorkshire during the Interregnum', pp. 97-100.

82. WYRO, QS 4/5, ff. 135-35v. The indictment subsequently went to King's Bench: PRO, KB 9/882, mm. 103-5. Cf. SP 18/127/20.

83. *Fenland riots and the English Revolution*, esp. chs. 3-6.

attention in 1653 and 1657.⁸⁴ On numerous other occasions disorders in the area came before King's Bench, assizes and quarter sessions. In addition to attacks, 'in warlike manner', by 100-strong gangs armed with muskets, carbines, pistols, pikes and swords, the courts also dealt with less serious assaults, forcible entries, and unlawful distrainments of hay, corn, cattle, sheep and horses. The activities of Nathaniel Reading, whom Lindley describes as 'probably the least scrupulous of that band of fortune seekers attracted into the fens', added to the atmosphere of violence.⁸⁵ It was sometimes fatal violence: at least two men were killed in the course of rioting between 1648 and 1660.⁸⁶

Elsewhere, commoners took advantage of the times to attack enclosures. At Cawood and Wistow, for example, customary tenants destroyed fences and returned 550 acres of recently enclosed land to common.⁸⁷

Disturbances also arose out of the tensions

84. Forster, 'County government in Yorkshire during the Interregnum', p. 90.
85. *Fenland riots and the English Revolution*, pp. 214-17. Reading was indicted at separate assizes at York for a series of offences committed during the 1650s: PRO, ASSI 44/7 (five indictments, Lent 1657); 42/1, f. 11.
86. PRO, ASSI 45/2/2/176; 45/3/2/146-52, 44/4 (indictment of John Godley et al, Summer 1651); 42/1, ff. 53, 60-63; KB 9/839, m. 197; 9/847, mm. 198, 205; 9/858, m. 12; 9/870, m. 344; 9/879, m. 402; 9/880, m. 159; WYRO, QS 4/2, ff. 64, 65v; 4/7, ff. 66-67.
87. Ian Gentles and W.J. Sheils, *Confiscation and restoration: The archbishopric estates and the Civil War*, p. 14. See above, pp. 28-29, for earlier opposition to enclosure.

between landlords and tenants generated by the divergent pattern of Civil War allegiance.⁸⁸ The sequestration of Royalist landlords, and the confiscation of crown and church lands created considerable confusion in landholding, not least among the tenantry who were often uncertain as to whom rent was due. Others simply decided against paying any rent at all. Some Royalist landlords, once they had compounded, attempted by force to recover these arrears as well as rents and tithes paid to the supervisors of the estate while it was under sequestration.⁸⁹

The result was a profusion of complicated court cases stemming from charges and counter-charges of riot, forcible disseisin, close-breaking and a variety of other misdemeanours. A good example of how disruption in land ownership and the strained relations between landlords and tenantry erupted into legal battles comes from Wetwang in the East Riding. William Hardy, said to be 'a man very ill affected towards the Parliament's proceedings', was accused by tenants of the former crown lands there of having 'molested and hindered [them] from the quiet enjoyment of the premises'. Hardy claimed 'a title or interest' from Sir Allen Appesley, a delinquent and, before the Civil War, farmer of the lands in question. Between 1649 and 1658

88. Above, pp. 108-9.

89. PRO, SP 24/57 (Johnson vs. Swan, petitions of William Johnson, April 26, 1649, and Thomas Swan, n/d); 24/1, f. 353; 24/2, f. 210 and *passim*; *Memorials of the Civil War*, vol. 1, ed. Bell, pp. 211-12

the dispute between ^{them} ~~was~~ fought through East Riding quarter sessions, York assizes, King's Bench, Exchequer, the commission of the sewers, and the indemnity committee, with prosecutions for riot, forcible entry and disseisin, barratry, encroaching on the highway, and assault.⁹⁰

Nearby, another delinquent landowner, Sir Michael Wharton, was entangled in a similar web of litigation. When Wharton told his tenants that 'he would leave them that had served the Parliament not worth a groat', he neatly encapsulated the underlying tensions that contributed to the disputes coming before the courts in the aftermath of the Civil War.⁹¹

The origins of these disputes are known because they were eventually brought to the attention of the indemnity committee and both petitioners and defendants submitted lengthy details of their case.⁹² But without

90. PRO, ASSI 44/5 (two indictments of William Hardy, Summer 1655); 44/7 (four indictments of William Hardy, Lent 1658); 42/1, f. 4; KB 9/859, mm. 514-19; SP 24/8, ff. 13v, 14v, 49-49v, 60, 100v; 24/10, ff. 1-1v, 7v; 24/11, ff. 69, 92v; 24/13, ff. 7v, 21, 149; 24/15, ff. 6v, 9, 72, 107, 155v, 158v, 162v-63, 171-71v; 24/16, ff. 79-79v, 95v-96; 24/79 (Tayler vs. Hardy, petition of Tristram Taylor et al, October 4, 1653); 24/80 (Thompson vs. Hardy, petitions of Bartholomew Thompson, June 21, 1653, and William Hardy, February 22, 1653).
91. PRO, SP 24/70 (Preston vs. Wharton, petition of Othinet Preston, February 13, 1651). For other cases before the indemnity committee involving Wharton: SP 24/57 (Jennison vs. Wharton, petition of Richard Jennison et al, February 13, 1651); 24/66 (Northend vs. Wharton, petition of John Northend, n/d); 24/47 (Fentiman vs. Wharton, petition of Francis Fentiman, October 14, 1647).
92. For similar cases see PRO, SP 24/34 (Bleasdale vs. Mauleverer, petition of Richard Bleasdale, June 22, 1649); 24/36 (Bradley vs. Earl of Sussex, petition of Thomas Bradley, February 17, 1649); 24/45 (Dodsworth vs. Redmaine,

a wider spread of documentation it is not possible to say how often disturbances deriving from long-standing economic or political grievances occurred, or what proportion they make up the reported total. However, the available evidence suggests that the increase in prosecutions reflects a higher incidence of riot and other disorders, and that its origins are to be found in the special conditions brought about by the Civil War.

The role played by the indemnity committee, which has been depicted as one weapon in the arsenal of a growing 'parliamentary tyranny', raises the question of the treatment accorded men suspected of Royalist sympathies by the courts.⁹³ Was the law in general, as some historians maintain the committee was, used in a partisan way?

Royalist sympathisers and activists came before the courts indicted for a variety of offences. There were soldiers accused of ordinary felonies, and consideration of their treatment is reserved to later chapters. For the rest, especially those accused of

(n, 92 cont.)

petition of Francis Dodsworth, June 27, 1650); 24/46 (Ellison vs. Mann, petition of Ralph Ellison, May 30, 1651); 24/47 (Field vs. Savile, petition of James Field, November 17, 1651); 24/48 (Fowke vs. Wentworth, petition of Walter Fowke, February 7, 1650). Cf. Ann Hughes, 'Parliamentary Tyranny? Indemnity proceedings and the impact of the Civil War: A case study from Warwickshire'.

93. The committee was established in 1647: *Acts and Ordinances*, vol. 1, ed. Firth and Rait, pp. 936-38, 953-54; Aylmer, *The state's servants*, pp. 13-14; J.S. Morrill, *The revolt of the provinces*, pp. 52-53, 73-80.

'political' offences - treason or sedition - the courts, at least by the standards of the Restoration, were not excessively harsh. Most, if those indicted for seditious or treasonable words is any index, received lenient treatment. At West Riding quarter sessions thirty people were tried for 'words' against Interregnum regimes. No verdicts were recorded in nineteen cases: eight prisoners were convicted and fined (the sums levied were usually below £5), and three acquitted.⁹⁴ At assizes fourteen of the sixteen men tried for similar offences were acquitted. The two convicted were simply fined and released after entering recognisances.⁹⁵

Of course, JPs and judges could afford to take a relaxed view of 'alehouse sedition', which invariably consisted of little more than name-calling, and not always by dyed-in-the-wool Royalists.⁹⁶ More serious offences demanded closer scrutiny, and could be confronted with less indulgence. If we are to credit

94. WYRO, QS 4/2-6, *passim*.

95. PRO, ASSI 44/2-8, 19; 47/20/6. Altogether twenty-six people were charged with these offences at selected assizes between 1649 and 1658 (see Table 6.2 for the selected courts). No verdicts were recorded in ten cases. Of the two convicted, John Middlewood was fined £100, and Robert Calvert £5: PRO, ASSI 44/4 (Summer 1650 and Summer 1651).

96. Adam Eyre, for example, was a former soldier for Parliament. He and his wife were indicted at West Riding quarter sessions in 1648 for calling Parliament 'a company of blood-sucking rogues and villains': WYRO, QS 4/2, f. 41v; PRO, KB 9/840, mm. 283-84, 287-88; Adam Eyre, *A dyurnall, or catalogue of all my accions and expences ...*, pp. 90, 351-52.

the account in *State trials*, the hearing in 1649 of the case against Colonel John Morris and his lieutenant, Michael Blackburne, charged with high treason after surprising Pontefract Castle during the Second Civil War, was conducted in an atmosphere of undisguised hostility and naked judicial bullying with, Morris was to claim, the defendants' legal rights completely ignored."

Morris's trial, however, was exceptional. Militating against him was his implication in the assassination of Colonel Rainsborough and his lack of standing in the county." More illustrious insurgents came off better. In 1655 those who had participated in the rising led by Sir Henry Slingsby, who 'was in the first rank of the gentlemen of Yorkshire', were acquitted at York assizes of levying war against the Protectorate, fined instead for riot, and released on sureties." This contrasts with the severity of the government reaction to the Yorkshire rebellion of 1663. Just as much a farce as Slingsby's attempt, it

97. T.B. Howell, *State trials*, vol. 4, pp. 1250-70.

98. Clarendon, *The history of the Great Rebellion*, vol. 4, ed. Macray, pp. 396-99, 402-7; PRO, ASSI 44/3 (examinations and informations in the case against Morris and Blackburne, Lent 1649).

99. S.F. Black, 'Coram Protectorate: The judges of Westminster Hall under the Protectorate of Oliver Cromwell', pp. 49-52; PRO, ASSI 45/5/3/145-55. Slingsby was only executed after becoming involved in a plot hatched by the Marquis of Ormonde in 1658: *The diary of Sir Henry Slingsby*, ed. Parsons, pp. xi-xiv; Clarendon, *The history of the Great Rebellion*, vol. 6, ed. Macray, pp. 64-65.

collapsed without any bloodshed; yet twenty-four rebels were later executed.¹⁰⁰

Of course, there may well have been a good deal of invisible bias operating in the courts against men and women known to have been for the king during the Civil War or later suspected of being crypto-Royalists when they appeared as accused or as prosecutors in ordinary suits. Certainly, the Civil War generated claims, from both camps, of malicious prosecutions by political enemies, and of partisan judges, justices and juries.¹⁰¹ Given the bitterness of the conflict, the intermittent scares resulting from conspirators' plots, the alarm caused by renewed outbreaks of fighting (Sir Marmaduke Langdale's campaign in 1648 and the Worcester campaign in 1651), it would be surprising if such claims were absent.¹⁰² But inevitably, it is hard to say exactly where the truth lies.

Nevertheless the Interregnum courts give an impression of acting with a certain amount of restraint. This can be explained in part by a degree of

100. PRO, ASSI 42/1, ff. 126-27. Cf. Ronald Hutton, *The Restoration*, pp. 204-7.

101. See, for example, the account given by John Hodgson, *The memoirs of Captain John Hodgson*, ed. Turner, pp. 52-65, of his legal troubles after the Restoration.

102. David Underdown, *Royalist conspiracy in England*, pp. 39, 91, 118-20, 138-41, 207-8, 272, 276. PRO, ASSI 45/4/1/22, 40-52, 56-58; 45/4/2/3-4; BCA, Tong MSS, 10/4-6; *Clarke papers*, vol. 2, ed. C.H. Firth, pp. 8-10, 20-22, 7-71; Rushworth, *Historical collections*, vol. 7, pp. 1113, 1366, 1400.

nervousness among administrators and judges about deviating from legal and constitutional norms. As S.F. Black has pointed out, Steele and Parker, the judges who presided at the trial of Slingsby and his confederates, were guided by the state of the evidence; neither had 'the least sympathy' with Royalism.¹⁰³ Similarly, the reluctance of assize and quarter sessions juries to convict those on trial for seditious or treasonable words probably reflects a general dislike of condemning prisoners when there were reasons to suspect that witnesses were motivated by political or personal animus.¹⁰⁴ Even the indemnity committee, the embodiment, according to some historians, of 'parliamentary tyranny', seems to have been evenhanded in its application of evidential and procedural rules.¹⁰⁵

103. 'Coram Protectore: The judges of Westminster Hall under the Protectorate of Oliver Cromwell', pp. 51-52. In the case of Slingsby's trial for participating in Ormonde's plot, 'They had against him evidence enough,' wrote Clarendon, 'that he had contrived and contracted with some officers of Hull ... for the delivery of one of the block-houses to him for the King's service': *The history of the Great Rebellion*, vol. 6, ed. Macray, p. 64.
104. The circumstances surrounding the trial (above, n.96) of Adam Eyre for words were probably not unusual: the allegations were brought by one Edward Mitchell with whom Eyre was involved in a protracted property dispute.
105. Until a full-scale study of the indemnity committee and its workings has been undertaken these comments remain tentative. But it is immediately noticeable from the committee's order books that it went to considerable pains to give defendants every opportunity to present their case, rejected petitions if they did not come within its jurisdiction, and rejected suits they considered unjustified, even if the defendant was 'a known malignant': see, for example, the rulings in PRO, SP 24/10, ff. 93, 97v, 111; 24/11, f. 96; 24/15, ff. 1v, 19, 47.

V

Part of the explanation may also lie in the desire among the propertied élite to close ranks against the advance of the radical religious sects. During the 1650s juries in Yorkshire and neighbouring counties exhibited less preoccupation with the machinations of the Sealed Knot and other Royalist organisations, and more with the spread of 'horrid blasphemies ... [and] dangerous and detestable principles' designed to 'seduce and mislead the poor ignorant, ungrounded and unsettled people of these northern parts'.¹⁰⁶ They were referring especially to the Society of Friends. George Fox's mission to the north in 1651-1652 had succeeded in attracting a large and enthusiastic following in Yorkshire.¹⁰⁷ It was not long before the Quakers aroused deep animosity in the populace and the implacable enmity of the authorities.

As Barry Reay has shown, popular hostility to the sect had complex origins.¹⁰⁸ In part it derived from the unpredictable proselytising of the early Friends whose methods were calculated to shock. Calling the local minister 'a mere hireling' or 'a deluder of the people'

106. PRO, ASSI 45/5/2/113 (Presentment of the grand jury of Cumberland, August 17, 1655).

107. Friends' House, Swarthmore MSS, vol. 1, 373; W. Braithwaite, *The beginnings of Quakerism*, pp. 58-77; B. Reay, *The Quakers and the English Revolution*, chs. 1-2. George Fox, *The Journal of George Fox*, pp. 42, 43, 50, 52, 55, 69.

108. *The Quakers and the English Revolution*, ch. 4.

became the hall-mark of Quaker intervention in churches, as did denouncing the bible as 'only a dead letter', which induced paroxysms of rage in congregations. But even these tactics were mild in comparison to walking naked through the streets, as William Simpson did 'in a prophetick Manner' at Skipton before being set upon by an enraged crowd.¹⁰⁹

Once their reputation was established, the mere presence of Quakers in the community was enough to provoke disorder. At Crake they were confronted by an armed mob 'in Rage and Fury', and were told to "depart or else there would be bloodshed and murder".¹¹⁰ At Wakefield leading members of the movement were beaten up; at York a Quaker was 'rudely insulted by a Rabble of People'; at Skipton another, 'advising the People to Repentance', was attacked by men armed with pike staffs and swords.¹¹¹

These are snapshots of the social tensions created by the arrival and spread of the sect. The notorious events at Malton provide a fuller picture. Jane Holmes, 'a wandering woman', and early Quaker arrived in the town in the summer of 1652. She won her first adherents

109. PRO, ASSI 45/5/1/105; WYRO, QS 4/4, f. 140v, 155v; 4/5, ff. 95v-96v, 116; J. Besse, *A collection of the sufferings of the people called Quakers*, vol. 1, pp. 90, 94. Cf. B. Reay, 'Popular hostility towards Quakers in mid seventeenth-century England.'

110. Friends' House, ARB MSS, 14; Besse, *A collection of the sufferings of the people called Quakers*, vol. 1, p. 92.

111. Besse, *A collection of the sufferings of the people called Quakers*, vol. 1, pp. 91-92, 94; Friends' House, ARB MSS, 159.

when she denounced Robert Hickson, the local minister. According to Hickson, some of his congregation deserted him and did 'usually abuse him, and call him a thief and a robber, and ... rail against the ministerial function'. Estimates of Jane's following varied from fifty to 300. They held processions through the town, publicly burning silks and ribbons, and met at all hours of the day and night. One Thomas Dowsley complained that since his family had been won over, his wife stayed out until after midnight and sometimes did not come home at all. 'His son doth deny his true obedience to him, and denies he is any more to him than any other man.' Another deponent said Jane had 'by delusion drawn the affection of his wife from him so he cannot keep his wife at home'. Within weeks it was claimed that hundreds were 'neglecting their callings, young and old, to compare notes of their entranced madness'. According to one inhabitant, Jane had 'almost caused a mutiny amongst the neighbours', succinct testimony to the divisive and turbulent impact of the early Quakers.¹¹²

A hostile observer of events in Malton drew this lesson: 'it concerns not a church, nay a commonwealth, if it were no more than pagan, to look to it, and prevent the growth of further mischief'.¹¹³ But the

112. Friends' House, Swarthmore MSS, vol. 1, 373; PRO, ASSI 44/5 (indictment of Jane Holmes, Summer 1652; depositions of Robert Hickson et al, August 24, 1652); Braithwaite, *The beginnings of Quakerism*, pp. 76-77.

113. Braithwaite, *The beginnings of Quakerism*, p. 77. Against this evidence of the early Quakers' social and religious

commonwealth was deeply divided. Among those who first succumbed to Fox's message were leading Yorkshire JPs.¹¹⁴ In the early days this made action against the sect highly problematic, the more so since many lesser office holders were also sympathetic.¹¹⁵ At a time when religious liberty was at the forefront of the wider political debate, the divided Yorkshire authorities were unable to develop anything like a consistent policy. As Quaker leaders noted, judicial reaction varied from place to place. 'The corruption of the magistracy', wrote a gaoled Quaker, Thomas Aldam, from York Castle, 'is great with us in diverse places in this West Rising of the county especially, but in the East Riding there is justice acted and the evil doers are rebuked.'¹¹⁶

The idea of justice is a recurrent theme in early Quaker propaganda, and it led to criticism of the law

(n, 113 cont.)

subversiveness (B. Worden, *The Rump Parliament*, p. 292; J.S. Morrill, 'The church in England, 1646-1649', pp. 105, 117, 119) should be put Alan Cole's reminder, 'The Quakers and the English Revolution', p. 41, that Quakers consistently repudiated allegations of political subversion and upheld the justice of Parliament's cause.

114. In the North Riding Luke Robinson, Member of Parliament and chairman of the bench (he later regretted his support for Fox: *The diary of Thomas Burton*, vol. 1, ed. J.T. Rutt, p. 172); in the East Riding Durant Hotham, son of Sir John Hotham, whom Fox described as 'a pretty tender man, that had some experience of God's working in his heart': *The journal of George Fox*, pp. 74-76, 86.
115. PRO, ASSI 44/5 (indictment of William Sykes, Summer 1652); Besse, *A collection of the sufferings of the people called Quakers*, vol. 1, pp. 91, 94.
116. Friends' House, ARB MSS, 159.

and those who enforced it. Pamphlets seized at Beverley addressed to 'cursed lawyers and corrupt magistrates, ... weighed in the balance of equity, ... [and] found too light,' pronounced them 'to be guilty of injustice'. And not only against Friends. 'Corrupt magistrates' were 'grinding the faces of the poor and needy ...'. According to Edward Billing the law was the 'badge of the conqueror'. 'It is high time', wrote James Nayler, 'for the Lord to draw his glittering sword, and execute judgment upon the unjust'.¹¹⁷ Quaker criticism tended to be bird-shot, widely scattered rather than precisely targeted, and what impact it had on the community at large remains to be researched. The possibility cannot be discounted that the general condemnation of the law's iniquities, and the more measured and specific criticisms of Fox (attacking lengthy remands and 'putting men to death for cattle and for money and small things'), may have had an influence.¹¹⁸ The behaviour of constables, jurors and potential prosecutors, most of whom were drawn from the social groups among whom support for Quakerism was rooted, in their dealings with the law and the courts may have been affected, although there is no direct evidence for this.¹¹⁹

117. PRO, ASSI 45/4/3/103-8; B. Reay, 'Quakerism and society', p. 150.

118. *The journal of George Fox*, pp. 65-66.

119. Support for early Quakerism was strongest among the 'middling sort': Reay, *The Quakers and the English Revolution*, pp. 20-26.

For the Friends and their supporters, however, the attacks on the law had straight-forward implications. They stripped the cloak of legitimacy from the claims to authority of magistrates and judges. When Quaker prisoners were arraigned they accused their accusers. Mary Fisher, indicted at assizes for disturbing a minister, was fined £200 for proclaiming before the court, 'there are no powers nor judges nor magistrates on earth ... all the gentlemen justices and ministers on earth are thieves and robbers'.¹²⁰

Such outbursts could be dismissed were they confined to a few isolated cranks. But they were not. They came from ordinary men and women who belonged to a popular religious movement, and they occurred at a time when the law was under fire from many different quarters. And they were highly public, announced before the judges, gentry, freeholders, and spectators assembled in court. This was sufficient to convince the authorities of the need for action. A petition from JPs, ministers 'and other well principled inhabitants' of Leeds, Wakefield and Bradford in 1658 called for the sect's 'timely' suppression, citing how:

'these populous Places and Parts ... now are, and for a long Time have been miserably perplexed, and much dissettled by that unruly Sect of People called Quakers, whose Principles are to overturn Magistracy, Ministry, Ordinances ... These will not know or acknowledge any Subjection they owe to any Powers upon Earth.'¹²¹

120. PRO, ASSI 44/5 (Summer 1652).

121. Besse, *A collection of the sufferings of the people called Quakers*, vol. 1, p. 98.

Although during the Interregnum action against the Quakers was intermittent and localised, it is possible to trace the growing élite hostility to the sect which made its suppression a priority and foreshadowed the repression of the Restoration and the conventicle acts.

VI

The argument that there were no special problems of law enforcement during the Interregnum does not seem tenable. There were complex and enduring problems. The military presence created an undercurrent of tension and led to outbreaks of serious violence, with the civilian population usually coming off worst. It also led to an increase in serious crime, reflected in the volume of indictments for felony laid before the courts. Dearth and widespread distress and poverty helped to swell the gaol calendars by bringing men and women before the courts charged with property crimes, usually the theft of small animals or food. Political tensions polarised local disputes and led to an increase in rioting and other forms of popular disturbance. Religious radicalism generated bitter divisions and also led to violent disturbances.

The priorities of law enforcement shifted as each emergency arose. The suppression of military disorder and the restoration of army discipline was something in which the courts played an active role. They were also active in imposing economic controls during the post-

war dearth and in taking steps against suspected Royalists and against disruptive religious sects. All this required the speedy reconstruction of the system of criminal justice and the appointment of trusted officers at all levels. This was achieved without too much difficulty, although problems of short-staffing persisted until the Restoration.

There was little that was novel in the way the courts operated, nor, with the exception of the 1650 adultery act (invoked against only a handful of offenders), in the laws they enforced. Unlike the manorial courts (explored in the previous chapter), the impact of the Civil War on ^{the} position of the common law courts was essentially short-term: a case of crisis and response rather than planned initiatives. We see this in more detail in the following chapters which deal in greater depth with the crimes coming before the courts and in the measures taken to detect, suppress and punish them.

Chapter Five

Offences and offenders: 1. Crimes against the person

'Let it alone, it is only a broken head', was one magistrate's response to a complainant who had come badly out of an alehouse quarrel.' Its casualness will be familiar to social historians of early-modern England. 'Broken heads' were not always treated seriously, and since the majority were considered private affairs, a very large proportion were nursed at home and never came before the courts. Only if the victim died did the matter transcend the purely private and become a communal concern. Here again, attitudes played an important part. The response to fatal violence was complex and varied. It was often possible for interested parties to make a composition, to hide the facts from the coroner and arrange a settlement of their differences.

The availability of assize depositions makes it possible to explore how the mechanisms of composition and prosecution worked. They also help to construct the background to violent crime and the way in which it was investigated. But before proceeding it is important to draw attention to certain difficulties in analysing crimes against the person.

I

Crimes against the person can be divided into four broad categories: assault, rape, homicide and infanticide. The first two present considerable problems. Assault was loosely defined, technically encompassing everything from a frenzied knife attack to threatening words. The indictment, however, very rarely carries any indication of the degree of violence used in an assault, and as a misdemeanour depositions were not normally taken. Further, assault could be dealt with in different ways: before the main criminal courts; summarily by justices; by arbitration; or by manorial tribunals. This is enough to render irrelevant any conclusions about its nature and frequency as they appear from assize and quarter sessions indictments. Moreover, as Chapter Three argued, the scale of prosecution for misdemeanours like assault was often bound up with the position of local élite groups and their capacity to police their communities. As such, the number of people punished says more about the outlook and organisation of the prosecutors than it does about the larger place of violent behaviour in the community.

With rape the problem concerns the typicality of the legal records. Sexual assaults on women were commonplace, and during the Civil War and its aftermath, if we are to believe contemporary accounts, they were even more widespread. Even when allowance is

made for exaggeration, it can be safely assumed that the dozen complaints of rape prosecuted at York assizes and West Riding quarter sessions in this period massively under-represent the true extent of sexual violence. This in itself raises important questions about the degree of violence women faced from men in everyday life; and the apparent reluctance of women to prosecute begs further questions about both their status in society and about prevailing attitudes to sexual violence.³ However, such issues go well beyond the scope of this thesis, while the paucity of the data makes it impossible to explore patterns in the incidence or circumstances of rape.

The number of offences treated as homicide was higher (Tables 5.1-5.2), and because violent deaths generated detailed records they afford better access into origins and circumstances of crimes against the

2. 'Wee are informed by some of the gentlemen of Yorkshire', wrote the Scots commissioners in 1644, 'of diverse disorders committed by some of the Scottish forces quartered in that county, and particularly in abuseing women by force': *Correspondence of the Scots commissioners in London, 1644-1646*, ed. Henry Meikle, p. 50.
3. Some rape victims apparently lacked the confidence to initiate a prosecution: Martha Redman of Wadsworth explained that she did not report that she had been raped by a neighbour, Christopher Shackleton, until eighteen months after the incident because her husband was absent and she had no one to help her: PRO, ASSI 44/4 (deposition of Martha Redman, February 22, 1650). It seems likely that many victims were deterred by the general scepticism with which the courts viewed such allegations: Matthew Hale, *History of the pleas of the crown*, vol. 2, p. 290; William Blackstone, *Commentaries on the laws of England*, vol. 4, pp. 215-17. On the reporting of rape and sexual offences in general: J.A. Sharpe, *Crime in seventeenth-century England: A county study*, pp. 63-65; J.S. Cockburn, 'The nature and incidence of crime in England, 1559-1625', p. 58.

TABLE 5.1
Homicide prosecutions at selected York assizes,
1641-1658

<i>Court</i>	<i>murder</i>	<i>manslaughter</i>	<i>total</i>
L.1641	7	11	18
S.1646	5	3	8
L.1647	10	6	16
S.1647	4	1	5
L.1648	4	0	4
S.1648	4	3	7
L.1649	5	1	6
S.1649	3	1	4
L.1650	8	0	8
S.1650	8	1	9
L.1651	8	0	8
S.1651	10	1	11
L.1652	4	1	5
S.1655	8	1	9
L.1656	8	4	12
S.1656	2	2	4
L.1657	2	0	2
S.1657	3	5	8
L.1658	2	2	4
TOTAL	105	43	148

NOTES: 1. Figures refer to persons indicted.
2. Excludes surviving *ignoramus* bills.

SOURCE: PRO, ASSI 44/1-8, 19; 47/20/6.

person. There are, however, interpretative problems. Despite the confidence exhibited by some historians in the relationship between prosecution and 'incidence', the study of homicide inevitably runs up against the omnipresent 'dark figure' conundrum.'

For what it is worth, the statistical evidence is laid out in Tables 5.1-5.2. The tables are derived from two different sources: the former from indictments laid before the court between 1641 and 1658; the latter from

4. Lawrence Stone, 'Interpersonal violence in English society, 1300-1980'; J.M. Beattie, *Crime and the courts in England, 1660-1800*, pp. 75, 107-12; J.A. Sharpe, 'Domestic homicide in early-modern England', esp. pp. 32-33.

TABLE 5.2
Coroners' inquisitions certified to York assizes,
1658-1673

	York Castle		Guildhall/Hull		Total	
	Victims	Accused	Victims	Accused	Victims	Accused
L.1658	4	4	0	0	4	4
S.1658	2	2	0	0	2	2
<i>No assize held in Lent 1659</i>						
S.1659	1	1	1	1	2	2
L.1660	3	3	0	0	3	3
S.1660	9	36	0	0	9	36
L.1661	9	11	0	0	9	11
S.1661	4	4	0	0	4	4
L.1662	8	12	0	0	8	12
S.1662	1	1	1	1	2	2
L.1663	0	0	0	0	0	0
S.1663	2	2	0	0	2	2
L.1664	2	2	1	0	3	2
S.1664	3	3	0	0	3	3
L.1665	3	3	2	2	5	5
S.1665	2	2	0	0	2	2
L.1666	9	9	1	1	10	10
S.1666	1	1	0	0	1	1
L.1667	2	4	2	2	4	6
S.1667	4	8	1	1	5	9
L.1668	6	12	0	0	6	12
S.1668	4	4	1	1	5	5
L.1669	6	5	0	0	6	5
S.1669	1	1	1	1	2	2
L.1670	1	1	0	0	1	1
S.1670	1	1	0	0	1	1
L.1671	0	0	0	0	0	0
S.1671	0	0	0	0	0	0
L.1672	2	3	0	0	2	3
S.1672	2	4	0	0	2	4
TOTAL	92	139	11	10	103	149

- NOTES: 1. Where the killing was attributed to an 'unknown person' it has not been counted in the *Accused* column.
2. Excludes infanticides.

SOURCE: PRO, ASSI 42/1 (coroners' inquisitions).

inquisitions *post mortem* certified by coroners to the clerk of assize between 1658 and 1672, summaries of which were later entered into the gaol book before being sent on to King's Bench. Owing to the patchy

survival of the indictments these inquisitions are the most promising available source for looking at prosecution patterns.*

Between 1658 and 1672 103 violent deaths were recorded, representing an annual average of 6.9. Assuming Yorkshire's population at this time to have been between c.350,000 and c.430,000, this produces a homicide rate of between 1.6 and 2 per 100,000 of the population.* The figures in Table 5.1 show that the rate between 1646 and 1651 was twice as high (14.3 p.a., 3.3-4 per 100,000), although the incompleteness of the sources and the smallness of the sample makes comparison difficult and any conclusions tentative.

The statistics, however, are suspect, not simply because of the uneven survival of the sources. The real problem lies with the machinery for investigating unlawful killings. This ground into gear with the communication to the coroner of news of a suspicious

5. Homicides were invariably dealt with at assizes, but very occasionally they went to quarter sessions: between 1638 and 1665 charges relating to three unlawful killings were brought before West Riding JPs, all of which were found *ignoramus*: WYRO, QS 4/2, f. 65v; 4/6, f. 91; 4/7, 74v. Another two cases were sent from quarter sessions to assizes and King's Bench: WYRO, QS 4/2, f. 31v; 4/3, ff. 196-96v. Most reported suspicious deaths were dealt with by the coroner, but some killings were investigated by a local JP. Thus the coroner's inquisitions do not give a full picture of the extent of reported killings: but in the absence of a fuller series of assize indictments they are the best available source.
6. This estimate compares with those suggested by Beattie, *Crime and the courts in England*, p. 108, of 2.6 in Sussex between 1660 and 1679 and 6.2 in Surrey over the same period. It must be emphasised, however, that since different sources have been used in arriving at these figures difficulties of comparison necessarily arise. For Yorkshire's population, above pp. 22-23.

death. If the machinery worked as intended, on arrival the coroner would summon an inquest jury (composed in the main of the wealthier inhabitants) which would view the corpse and pronounce on the cause of death.' If death was found to be due to an unlawful act the jurors would be invited to name the culprit who would be arrested (if he or she had not fled) and sent to gaol to await trial.*

But there were several stages at which it was possible for the system to be short-circuited. Successful concealment of a corpse, for example, might lead people to think that the victim had simply moved on, not unusual given the highly mobile population of the time.* And corpses discovered without signs of

7. Michael MacDonald, 'The secularization of suicide in England, 1660-1800', pp. 65-67, suggests that in the sixteenth and seventeenth centuries coroners' juries were frequently illiterate and drawn from husbandmen and artisans. In mid-seventeenth-century Yorkshire they appear to have been of higher social status. At Halifax inquest juries were dominated by élite groups: among the jurors at an inquest in 1656 (PRO, KB 9/870, m. 128), for example, were leading inhabitants like Abraham Parkinson, Robert Exley (above, pp. 67n., 83n., 95n., 104n., below, p. 310); and James Scarborough, a one-time constable, churchwarden and leet juror (CDA, MIC:8/101; YAS, MD 225/1/388 (Halifax township presentments, Michaelmas); 225/1/376 (Halifax leet jury, Michaelmas)).
8. For a summary of the coroner's powers and inquest procedure see R.F. Hunnisett, *The medieval coroner*, esp. ch. 2; and his article: 'Eighteenth-century coroners and their clerks'; cf. R.H. Wellington, *The king's coroner*.
9. The chance unearthing of human bones thought to have lain buried for some time, as at Newhay in 1656 when they were uncovered by a dog that was seen 'eating something', indicates that corpses could be successfully hidden: PRO, ASSI 45/5/3/87-94; KB 9/871, m. 133. During this period some murder prosecutions were brought without a body (PRO, ASSI 45/5/4/11; 44/7 (indictment of George and Mary Cutforth, Lent 1657); 44/4 (deposition of George Wright, November 23 [?], 1650; and indictment of James Baddilaw, Lent 1651)),

violence (where murder was by poisoning or suffocation) might not always be regarded in a suspicious light.

Even if the circumstances strongly suggested foul play the coroner still might not be summoned. The cost involved in holding an inquisition, which would fall on the better-off members of the community (those responsible for informing the authorities), could be considerable.¹⁰ The township's incentive would have been seriously blunted if the local coroner was an unpopular figure, perhaps one noted for making excessive financial demands.¹¹ There is enough evidence of tension to indicate that the degree of co-operation the coroner is thought to have enjoyed from the community may have been overstated. Occasional prosecutions for failure to notify the coroner

(n, 9 cont.,)

but most jurists thought it preferable to have the corpse. Hale, *History of the pleas of the crown*, vol. 2, p. 290, 'would never convict any person of murder or manslaughter, unless the fact were proved to be done, or at least the body found dead'. Cf. Blackstone, *Commentaries on the laws of England*, Book 4, p. 357.

10. In addition to the coroner's fee there were several incidental expenses: the jury's meat and ale, payment for witnesses' travel costs, payment to men for guarding the corpse and any suspect, and conveying the suspect to gaol. The constable of East Ardsley's accounts for 1667-1668 (VYRO, D 16/5/1) show that the cost of holding one inquest came to £1-14-2 (15% of the constable's disbursements for that year), made up of payments for watching the body, sending men to Leeds and Barnsley to fetch the coroner, and sending the coroner's warrant into three townships. In addition there was the coroner's fee of 13/4d.
11. There were few Yorkshire coroners in this period who did not end up indicted for extortion at one time or another: see, for example, VYRO, QS 4/4, f. 254; 4/5, f. 113v; PRO, ASSI 44/5 (indictment of John Burdett, Summer 1652). There was a long history of corruption among coroners: Hunnisett, *The medieval coroner*, pp. 118-33.

emphasise that, for whatever reasons, local people sometimes preferred to inter bodies without the mandatory inquisition.¹²

The system could also be short-circuited if there was a death-bed reconciliation. A surprising number of dying victims publicly absolved their attackers with gestures of selflessness. 'If I forgive not him', said Elizabeth Pearson referring to her husband who had inflicted the wounds from which she was soon to die, 'how shall I be forgiven of God?'¹³ There were express instructions not to seek legal redress: one dying woman told her family 'not to meddle or have any coroner, for God was able to reward them according to their dealings'.¹⁴ In both the above cases inquests were held, but only after a significant delay; and if some families eventually notified the coroner, there were undoubtedly others who followed the victim's instructions to the letter.

Reconciliations could not always be arranged. Indeed, there is in the depositions an oft-displayed eagerness to exact revenge, which cautions against over-estimating the propensity of early-modern villagers to achieve neighbourly, but illegal, composition of their differences.¹⁵ Money helped smooth

12. For example, PRO, ASSI 47/20/6/320; KB 9/862, m. 94.

13. PRO, ASSI 45/5/5/55-59.

14. ASSI 45/5/3/97-98.

15. On his death-bed Mathew Read told his assembled friends 'that if he died, that he required life for life, for he ...

the path. And financial compensation was predicated, of course, on the understanding that no formal complaint be made.¹⁶

A brief case study illustrates how such settlements were achieved. In September 1653 Michael Badkin, deputy bailiff of Cawood, was attacked by Thomas Taylor as he tried to recover a debt. Soon afterwards a meeting between the wounded Badkin and a contrite Taylor was arranged through the intervention of a neighbour. At the meeting Taylor 'desired to make an end of all quarrels and differences betwixt them, and thereupon Badkin and Taylor went lovingly into the parlour together'. It was agreed that Taylor would give the wounded man 'six shillings in hand and four shillings more to be paid at Martinmas next', and 'so the said parties parted very lovingly'. The following day, however, Badkin died, and because he had previously, and in public, forgiven Taylor there was

(n, 15 cont.)

'would never forgive' his attacker: PRO, ASSI 45/5/5/4. Similarly, the coroner investigating the death of Edward Dyson was told by a witness that 'he did entreat the said Dyson to send for [his assailant] to be reconciled with him, but he denied, and said it was to no purpose. For if he forgave him the law would not': ASSI 45/6/1/131-33. The victim's family might also be unforgiving and exert pressure for legal action to be taken: ASSI 45/4/2/55-57; 45/4/3/73-74.

16. Thus when William Gawtrisse realised that his neighbour Anne Nicholson, whom he had earlier assaulted, was in danger of death, he went with a friend to see her and 'desired ... if ever he had done her any wrong she would forgive him, to which she answered saying I pray God send a good agreement between my husband and you': PRO, ASSI 45/5/3/32-35. Forgiveness did not always depend on payment: in another case a witness deposed that the victim said in his hearing 'that he would freely forgive Mr. Thornton [that is, his attacker] for what he had done to him': ASSI 45/5/2/94-95.

some debate about going ahead with the burial without informing the coroner. In the end, the matter was brought to the authorities' attention, although exactly how is not known. The dead man's son, Mark, was accused of misprision of felony, for having accepted money in order not to prosecute." Although in this case a prosecution went ahead despite the informal settlement, in others composition successfully kept the law at bay."

But even if a violent death was brought to light an inquisition still might not be held. Coroners were thinly spread in Yorkshire. Outside the incorporated boroughs, which were well served, there were usually no more than seven or eight active coroners, and their districts tended to be very large, spanning two or even three wapentakes." John Burdett, for example, officiated in the populous area covered by the wapentakes of Staincross, Stafforth-Tickhill and the

17. PRO, ASSI 45/4/3/88-91; 45/5/1/2-3. Taylor was eventually indicted for murder and convicted of manslaughter: ASSI 44/5 (Lent 1654). In another case that eventually came to court the father of one Thomas Blake, who had been killed in an alehouse quarrel, was advised by a neighbour, Richard Harrison, to see the killer's uncle who 'would give him a composition for the death of his son, and Harrison did propound five or six pounds': ASSI 45/5/3/76-79. Cf. ASSI 45/5/3/76; 45/1/5/74-77; J.A. Sharpe, '"Such disagreement betwyx neighbours": Litigation and human relations in early-modern England'.
18. PRO, ASSI 45/1/4/10.
19. In the boroughs the mayor acted as coroner: see, for example, PRO, ASSI 45/1/4/59; 45/3/2/3-5. York, however, had its own coroners - three in the early 1650s: ASSI 44/5 (*nomina ministrorum*, Lent 1652). In 1647 there were, outside the boroughs, seven coroners; nine in 1649 (ASSI 44/3, *nomina ministrorum*, Lent 1647 and Lent 1649).

southern part of Agbrigg.²⁰ With the long distances they were expected to travel, hazardous at the best of times, it should not be surprising that coroners (some of whom were very elderly men) might fail to answer a summons.²¹ On average Yorkshire coroners together certified about fifty inquisitions each year (including those arising out of non-culpable deaths). This is suspiciously low in a population well in excess of a quarter of a million, and raises doubts about consistent reporting.²²

But even assuming that in most cases coroners did summon a jury to view the body it is quite possible that misleading verdicts were returned. As Michael MacDonald has argued, coroners' juries were sensitive to local opinion and susceptible to pressure from below. In cases of suspected suicide this sensitivity was leading them increasingly to substitute *non compos*

20. For Burdett's activities: PRO, 45/1/3-3/2, *passim*; 44/2, *passim*; KB 9/817-42, *passim*.

21. John Brigge, who officiated in Morley wapentake, was about fifty-six years old when he was appointed coroner (first recorded inquisition July 4, 1636: PRO, KB 9/811, m. 325) having been baptised at Halifax on May 22, 1580 (WYRO, D 53/2). He remained an active coroner until 1660, by which time he was eighty years old. A.T. Longbotham, 'Some Halifax lawyers', p. 326; T.W. Hanson, 'Grindlestone Bank', p. 108. At the Lent 1651 assizes the grand jury recommended that Ralph Leadom was 'very aged', unable to fulfil his duties and should be removed as coroner: PRO, ASSI 44/4.

22. Between 1658 and 1665 summaries of 424 inquisitions were entered by the clerk of assize into the gaol book: PRO, ASSI 42/1, *passim*. Cf. S.J. Stevenson, 'The rise of suicide verdicts in south-east England, 1530-1590: The legal process', for the difficulties facing coroners in investigating suspicious deaths.

mentis verdicts.²³ They were, in other words, manipulating the facts in order to arrive at a verdict that would suit the community. The same may well have been true of homicides, particularly if a composition had been made and the victim forgiven the attacker.

There were also technical reasons why misleading verdicts were returned. A difficulty facing all inquest juries, in the absence of a sophisticated body of forensic science, was how to establish the cause of death. In cases of suspected poisoning, for example, it must have been almost impossible to tell from the state of the body precisely how death had occurred. In such instances the opinion of neighbours about the wider circumstances was probably important.²⁴ But it is highly unlikely that this 'community knowledge' was consistently accurate.

Even where a wound was clearly visible the jury had to decide whether it was responsible for causing death. If the wound was such that in normal

23. 'The secularization of suicide in England'.

24. The opinion of neighbours could be divided: see, for example, the very full (and confusing) depositions relating to the suspected poisoning of John Walker by his wife Anne. In this case the authorities also showed signs of confusion. The initial complaint against Walker in August 1650 was investigated by a magistrate who apparently did not come to any conclusion about the cause of death. In October the coroner heard evidence from the dead man's daughter who alleged poisoning. An inquest was held and in December the jury found that John Walker had died of fever contracted in his wife's bed and noted that Anne Walker's previous husband had also died of fever in the same bed. For reasons that are obscure, and on legal grounds equally uncertain, Anne Walker was prosecuted at assizes for murder. The grand jury rejected the bill: PRO, ASSI 44/4 (indictment of Anne Walker, Lent 1651; and depositions of Anne Walker *et al*, August 19, 1650); KB 9/856, m. 67.

circumstances recovery was expected, but the injured party had still died (within a year and a day or, where the statute of stabbing was invoked, six months), a verdict of death by visitation of God ought to have been the outcome. Thus the nature of the wound became a critical factor in determining the inquest verdict. What the jury had to decide was whether it was 'mortal'.

In trying to come to a decision on this inquest juries were often faced with contradictory evidence. When Mary Smith complained of injuries she had received in a fight with Mary North the jurors were told that the complaint found little sympathy. Smith was said by one witness to be 'a factious woman'. Another said that he could find no visible signs of injury and saw her 'go sufficiently away'.²⁵ What were they to make of her subsequent death?

Juries may have been influenced by the coroner when it came to assessing the cause of death. Some coroners seem to have had a certain amount of medical knowledge, and they probably built up a degree of forensic expertise based on lengthy experience.²⁶ It is possible that individual coroners were applying fairly

25. PRO, ASSI 45/3/1/145. Another jury, investigating the death of Anne Fairbanke, was told by one witness that about half an hour before she died she seemed 'as well as ever he saw her'. Others testified that she showed signs of having been beaten: ASSI 45/4/3/40-44.

26. John Brigge, the coroner who served Morley wapentake, seems to have had some medical training: PRO, ASSI 45/1/2/17. Brigge, like most Yorkshire coroners, served for an extended period, over twenty years (see above n. 21). Cf. Heywood, *Diaries*, vol. 2, p. 303.

consistent criteria in pronouncing on the nature of the wound (though whether or not juries followed them is open to debate); but equally, there was likely to have been a good deal of variation from coroner to coroner: what one man thought 'mortal', another might just as easily decide was curable.

To help with the forensic side, 'expert' witnesses, such as they were, were invited to give their opinion at the inquest. John Harrison deposed that he had searched 'the wound with a quill', but was ultimately able to say only that the victim's head was swollen 'as big as two heads'.²⁷ Like Harrison other 'experts' were often ambiguous or inconclusive. What, for example, was the jury to decide from the testimony of Edward Elwick who testified that six weeks beforehand he had been called to an inn to look at a wound received by Mr. Jasper Belt? Elwick 'then verily thought and was persuaded [it] was not mortal in itself, but might be an antecedent cause of other infirmities which might occasion his death'.²⁸ Others were more specific, pronouncing some wounds mortal, some curable, presumably basing their conclusions, like the coroner, on no more than general rules formulated from the vagaries of their own experience. We do not know what weight juries attached to these apothecaries,

27. PRO, ASSI 45/4/3/41. Cf. ASSI 45/1/4/45; 45/1/5/24; 45/5/2/95; 45/5/3/22, 46, 78; 45/5/5/4; 45/6/1/10, 150.

28. PRO, ASSI 45/6/1/183. The jury was evidently satisfied that the wound had been the cause of death and found it manslaughter, but the trial jury acquitted Belt's alleged killer, Roger Tesh: ASSI 42/1, ff. 90, 94.

barber surgeons, midwives and cunning folk, although the regularity with which they were called suggests that both coroners and juries thought their opinion worth having. One grand jury rejected a homicide indictment after hearing evidence from a surgeon that the dead man's wound was not mortal.²⁹ Whatever the degree of expertise these witnesses brought to the inquisition they could not, in more complex cases, do more than guess as to the nature of the wound, and may well have unintentionally misled juries. It is not surprising, therefore, to learn that occasionally juries professed themselves 'altogether ignorant' of how death came about.³⁰

For three main reasons, then, the statistical evidence for the incidence of homicide in the early-modern period is suspect. First, not all violent deaths were discovered; second, not all were notified to the authorities; third, it was not always possible accurately to ascertain the cause of death: that some unlawful killings were wrongly attributed to other causes is certain. Even if it is accepted that only a handful of homicides every year went unreported, it is

29. PRO, ASSI 47/20/1/133-34.

30. One coroner's jury viewing the skull and neck bones of a child was unable to say how death had occurred and, apparently uncertain about what to do, returned a verdict of 'visitation by God'. The mother was nevertheless later prosecuted for murder: PRO, KB 9/871, m. 133; ASSI 45/5/3/87-94; 44/7 (indictment of Katherine Talbot, Summer 1656). Cf. ASSI 42/1, f. 191. In 1647 assize judges ordered a coroner's jury, which had previously been unable to agree on a verdict, to meet again and return a verdict within a month: ASSI 47/20/6/549v.

enough to render meaningless the whole body of statistical evidence since the total number of reported cases in any one year was so small.³¹

II

If question-marks hang over the statistical evidence drawn from indictments and gaol books, depositions at least illustrate the origins and circumstances surrounding violent death. An important issue here is the extent to which unlawful killings were premeditated: the distinction between murder and manslaughter is important not just from a legal point of view but also when considering the nature of violent behaviour. Murder was defined by Dalton as occurring 'when one man upon malice pretended, doth kill another feloniously, viz. with a premeditate and malicious mind, whether it be openly or privily done'. The key element is 'malice', which could be:

'apparent (as where there was a precedent falling out, or where there is a lying in wait, or a time and place appointed & co.) or it may be less apparent ... and yet shall be implied, presumed and taken to bee out of malice precedent, by the manner and circumstances thereof.'³²

31. In any one of eight years between 1658 and 1672 two concealed homicides would have doubled the recorded homicide rate (Table 5.2).

32. *The countrey justice*, p. 237. Sir Edward Coke, *The third part of the institutes of the laws of England*, p. 47, defined murder as occurring 'when a man of sound memory and of the age of discretion, unlawfully killeth ... any reasonable creature ... with malice fore-thought, either expressed by the party, or implied by the law, so as the party wounded or hurt, die of the wound or hurt, within a

As Table 5.1 shows, most prosecutions began as prosecutions for murder, implying deliberate intent. However, the depositions from 200 cases of violent death occurring between 1640 and 1660 suggest that it took place more often as the result of sudden outbursts of rage, often between friends, and that prior malice was comparatively rare. Of course, there are problems in reading the deposition evidence: it is often impossible to reconcile the conflicting accounts given by witnesses and accused; and, of course, the accused had a compelling motive to throw the most promising possible light on the incident; above all to deny any suggestion of malice. Still, it is noteworthy how seldom allegations of prior malice were directly made or implied.³³ More common are the explicit statements of witnesses that there was no previous quarrel between the accused and the victim. Thus Robert Blake of Acklam deposed that he did not know 'of any quarrel formerly'

(n. 32 cont.)

year and a day after the same'. Manslaughter, according to Dalton, p. 243, was the 'killing of a man feloniously, with a mans will upon present heate, and yet without any malice aforethought', for example when two men quarrel and fight suddenly and one is killed.

33. Previous malice was attributed, in a rare example, to Thomas Spicer, suspected of having murdered a neighbour, William Whitley. According to one witness sworn by the coroner, Spicer had earlier said 'that William Whitley had done him wrong in taking his ground from him': PRO, ASSI 45/1/4/66. Similarly, another suspect, Richard Dunwell, told the magistrate that two days before the slaying he had quarrelled with his victim, Robert Oates. The dead man's brother also deposed that Dunwell had earlier sworn he would be revenged on Oates because of a previous fight between the two men: PRO, ASSI 45/2/2/42. Cf. ASSI 45/2/2/86-88.

between Thomas Blake, his son, and the man who killed him.³⁴

In particular categories of homicide prior malice was assumed. Fatal domestic violence was invariably treated as murder. Poisoning, the favoured method by which wives got rid of unwanted spouses, and described by Coke as 'the most detestable' of all kinds of murder, necessarily involved premeditation.³⁵ Murder by poison was comparatively rare, however (Table 5.3). Domestic homicide was more commonly perpetrated by husbands who simply beat their wives to death. Often there was a history of protracted physical abuse. At the inquest into the death of Anne Feales one witness deposed that she had previously seen 'sundry strokes on [Anne's] body' and 'very black' bruises on her loins which Anne claimed to have received at the hands of her husband.³⁶ Similarly, the inquest jury investigating the death of Edith Jagger heard from several neighbours that she had endured a long history of beatings from her husband, Isaac. Both of these deaths resulted in charges of murder.³⁷

34. PRO, ASSI 45/5/3/76. Some victims survived long enough to confirm that there was no previous enmity between them and their attackers: ASSI 45/5/2/94-95; 45/5/6/39-44.

35. Coke, *The third part of institutes of the laws of England*, p. 48. Cf. Dalton, *The countrey justice*, p. 240.

36. PRO, ASSI 45/1/4/13.

37. PRO, ASSI 45/4/3/73-74; 44/5 (indictment of Isaac Jagger, Lent 1654). For other cases of protracted domestic violence resulting in death see ASSI 45/5/5/55-59; 3/1/203b; 44/3 (indictment of Joshua Thompson, Lent 1649; and depositions of Jane Hickson et al, March 9, 1649). Cf. ASSI 45/4/1/184-86.

Killing without provocation was also murder.³⁸ Coroners and magistrates went to some lengths to determine whether there had been provocation, and what form it had taken. Many suspects, possibly because they were aware of its legal importance, emphasised that immediately prior to the incident they had themselves been struck. However, even when witnesses confirmed that the accused had been provoked the charge was invariably one of murder. Thus the coroner's jury investigating the death of Robert Holmes pronounced it murder despite the fact that the account given to the coroner by witnesses would seem to have qualified Holmes's killer, Robert Exley, for the lesser charge of manslaughter on just about every criterion. One witness saw Holmes give Exley:

'a stroke on his nose with his finger which made his nose bleed, at which very instant Exley put his hand from him towards Holmes, his knife being in his hand, at which very time Holmes said, "I am slain".'³⁹

However, if those responsible for drafting the indictment tended to insist on the more serious charge of murder, trial judges and juries had a fairly uniform tendency to find verdicts for the lesser charge of

38. Dalton, *The countrey justice*, p. 237.

39. PRO, ASSI 45/4/1/68-71. Similarly, Henry Beecroft was indicted for murder even though witnesses deposed that they had seen the victim hit him first: ASSI 45/2/2/9-11. There were two main criteria in determining the issue of provocation: the accused had first to have been struck (mere words were not regarded as sufficient justification for retaliation); and retaliation had to be instantaneous: see Beattie, *Crime and the courts in England*, pp. 91-96, for the rules applied by courts.

manslaughter. Exley, arraigned for murder at assizes, was convicted of manslaughter and granted clergy.⁴⁰

A number of defendants claimed provocation of a different order. In their defence they maintained that after heated words the parties agreed to go to an appointed place to fight. This has been described by Beattie as 'a sort of popular duel'.⁴¹ Isaac Waterhouse, examined about the death of Jervis Sheppard, told the investigating magistrate that he had seen the deceased at Thomas Chappell's house in Barnsley where he told him:

'he had a levy against him which he must and would execute ... The said Sheppard gave this examinant very vile provoking speeches and challenged this examinant to go forth of the door which he did; and going both together into the backside of the said house there Sheppard gave this examinant two or three blows with his fist.'

At this point Waterhouse, evidently coming off worse, produced 'a pocket dagger' and repeatedly warned Sheppard 'to stand of me'. Instead, Sheppard rushed at his adversary and was stabbed to death.⁴² Normally,

40. PRO, 44/4 (Lent 1651); 47/20/6/150. If a fight, like the one in which Exley killed Holmes, involved knives the issue of provocation was more complex. The statute of stabbing (2 James I, c.8), as it was popularly known, made it murder if one person stabbed and killed a second even if evidence of malice aforethought was lacking. However, if, as in Exley's case, the victim had previously struck the accused the killing did not fall under the terms of the statute (the victim had to die of his wounds within six months and not have had a weapon drawn at the time of the fight: Dalton, *The country justice*, p. 237).

41. Beattie, *Crime and the courts in England*, p. 92.

42. PRO, ASSI 45/5/2/101-5. Cf. ASSI 45/2/2/111-12; 45/5/6/67-69.

deaths resulting from 'popular duels' resulted in charges of manslaughter. Even Waterhouse, whose use of a knife contravened the accepted rules of such a contest, seems to have received lenient treatment.⁴³

Waterhouse's claim that he was acting in self defence was repeated many times by defendants. Although investigating magistrates and coroners were anxious to hear testimony on the subject, the practice seems to have been to prefer an initial charge of murder and leave settlement of the issue to the trial judge and jury. As with provocation, this occurred even when there was supporting testimony for the accused's claim to have been acting in self defence.⁴⁴

Two other categories of homicide were invariably dealt with as murder, both of which, on the face of the deposition evidence, were rare occurrences. The first involved killing during the course of a robbery or

43. No indictment has been found for Waterhouse but a recognisance ordering him to appear at assizes and answer for Sheppard's death indicates he faced a charge of manslaughter (suspected murderers were not normally bailed): PRO, ASSI 47/20/2/257-66.
44. See, for example, the depositions relating to the death of William Wayneman. Here witnesses agreed that the accused, Francis Holden, tried to get away from Wayneman who had been threatening him. Only when Holden was trapped did he hit Wayneman with 'an instrument of husbandry'. Nevertheless Holden was prosecuted for murder: PRO, ASSI 45/2/1/125-28; 47/20/6/549. For other examples of homicides being prosecuted as murder in which the accused claimed self-defence and was supported by witnesses: ASSI 45/5/2/108, 45/5/3/17-24; 44/6 (indictments of John Denby *et al*, Summer 1655: Denby and the two men indicted with him were members of the watch at Keighley), 44/7 (indictments of Christopher Burges *et al*, Lent 1657). In all of the above cases the defendants, despite the initial charge of murder, were either found by the jury to have acted in self defence or had the bill rejected by the grand jury as *ignoramus*.

other unlawful act. This was very rare. There is only one case in the depositions in which it is clear that fatal violence was used in furtherance of a robbery. This was the double murder in 1655 of Dorothy and Robert Haskins by John Scaife and, unusually, it exhibited all the signs of carefully calculated violence. The Haskins were travelling from Studley in the North Riding to their home in Berkshire when they were killed. Shortly beforehand the couple had stayed at the house of Henry Topham where, in the presence of several people, including Scaife, they had received £5 in money. Scaife followed the pair to Thornton, robbed and then killed them, presumably to avoid identification.⁴⁵

The circumstances behind the Haskins' murders were, it must be stressed, atypical. Indeed, on the basis of the depositions it was slightly more common for the robber than for the intended victim to meet with sudden violent death. The depositions contain several instances of thieves being killed by their victims. One thief, for example, was shot and killed by a servant as he snatched a chicken; another was beaten to death as he attempted to steal some corn.⁴⁶

The second category concerns the killing of an officer of the law in the exercise of his duty.⁴⁷

45. PRO, ASSI 45/5/4/41-44.

46. PRO, ASSI 45/1/2/13; 45/2/2/19-20; 47/20/1/514.

47. Dalton, *The countrey justice*, p. 238.

Again, this happened very infrequently: although officers could expect to encounter regular assaults they were rarely killed. In the period under review the depositions record that one constable was stabbed to death (by a soldier), a bailiff fatally beaten, and a sequestrator shot and killed.⁴⁸ More often township officers, in particular bailiffs and watchmen, appeared in the courts as defendants, several of them accused of having killed unlawfully.⁴⁹

A common, perhaps the most common, place where men met with violent death was the alehouse. There are twenty-two cases in the depositions of fatal attacks taking place inside an alehouse or inn (about 10% of the sample), and mention of drink is made in several others. In these drunken brawls victims and accused alike were reported to have been 'much distempered in drink'. A few defendants claimed, in mitigation, to be so 'far gone in drink' that they had no recollection of the events.⁵⁰ Such explanations were no defence in law, but the courts were rarely harsh in their treatment of alehouse violence. Men understood the easy progression from drink to 'hard terms' and from terms to blows which could all too often result in fatal injury.

The weapons used in alehouse killings were usually

48. PRO, ASSI 45/2/2/121-22; 45/4/3/88-91; 45/3/2/57-59.

49. PRO, ASSI 45/5/1/41-44; 45/5/2/108, 101-5; 45/5/3/39-41.

50. Richard Tompson confessed before the coroner investigating the death of Jane Farnelley that he had been drinking and was 'overcome with the strength of the ... ale, and cannot remember what he did nor said': PRO, ASSI 45/5/3/116-21. Cf. ASSI 45/1/4/19-21, 23-28.

TABLE 5.3
Methods of killing in homicides tried at York assizes,
1641-1658

<i>Weapons</i>	<i>Murder</i>	<i>Manslaughter</i>	<i>Total</i>	
			n.	%
Cudgel/staff	15	6	21	23.1
Sword/rapier	14	4	18	19.8
Hands/feet	9	8	17	18.7
Knife/dagger	9	3	12	13.2
Poison	6	0	6	6.6
Firearm	3	3	6	6.6
Tool	4	2	6	6.6
Other	3	2	5	5.5
TOTAL	63	28	91	100.1

NOTE: 1. Homicides found in the gaol calendars have not been included here because the calendars do not normally carry information about the weapon used.

SOURCE: PRO, ASSI 44/1-8, 19.

knives or staffs. Some men were killed by blows from fists or feet; a couple were felled by wooden trenchers. In fact, the weapons used in the majority of unlawful killings were everyday objects of this kind; the things that tended to be closest to hand (Table 5.3). The prevalence of cudgels, hands and feet, and the personal weapons which men normally carried with them (knives and swords) is further evidence of the essentially spontaneous nature of early-modern homicide. 'Grudge' killings or carefully planned murders were apparently few.

The majority of unlawful killings involved men (there were few women) from the labouring and artisan classes (Table 5.4). However, the gentry and yeomanry displayed a similar propensity for violence. Oliver

TABLE 5.4
Additions of homicide suspects prosecuted
at York assizes, 1641-1658

	Murder		Manslaughter		Total	
	n.	%	n.	%	n.	%
MALES						
Gentleman	4	5.3	3	11.5	7	6.9
Yeoman	5	6.6	3	11.5	8	7.8
Husbandman	1	1.3	0	0	1	1.0
Labourer	62	81.6	16	61.5	78	76.5
Butcher	1	1.3	1	3.8	2	2.0
Joiner	1	1.3	0	0	1	1.0
Blacksmith	1	1.3	0	0	1	1.0
Cordwainer	0	0	1	3.8	1	1.0
Weaver	0	0	1	3.8	1	1.0
Clothier	1	1.3	0	0	1	1.0
Trooper	0	0	1	3.8	1	1.0
male subtotal	76	100.0	26	99.7	102	100.2
FEMALES						
Spinster	1	7.1	0	0	1	5.9
Married	1	78.6	3	100.0	14	82.3
Widow	2	14.3	0	0	2	11.8
female subtotal	14	100.0	3	100.0	17	100.0
TOTAL	90		29		119	

- NOTES: 1. Because of the limited information contained in gaol calendars the 'additions' of some of those indicted could not be established (twenty-two males, six females).
2. Since inquest juries would be familiar with the status of local offenders, the 'additions' recorded on coroners' inquisitions are probably quite reliable. However, if the inquisition was later redrawn by the clerk of assize the original 'addition' was usually altered to 'labourer': see, for example, the inquisitions on view of the bodies of William Pollard the elder, William Pollard the younger, and Thomas Husler; and the indictments of John Hopkinson, Henry Bartlett and Richard Lea also Syn: PRO, ASSI 44/2 (inquests June-September, 1648; and indictments, Summer 1648). There is, therefore, inevitably an element of distortion in the social profile suggested in this table which relies on both inquisitions and redrawn indictments. Cf. above, p. 59.

SOURCE: PRO, ASSI 44/1-8, 19.

Heywood records an incident in 1681 when the Earl of Eglington and three justices of the peace were playing cards at a Doncaster inn. A quarrel arose in which Eglington fatally stabbed the proprietor in the thigh and belly.⁵¹ The circumstances surrounding this episode were identical to those found in fights between labouring men in lowly alehouses. In the seventeenth century the habits of violence were common to all classes.

III

This profile, however, leaves out homicides perpetrated by soldiers. These are a complicating factor, analysis of which throws further light on the troubled civilian-military relations in Yorkshire during the Civil War and Interregnum (discussed in Chapter Four). Even before the widespread raiding and plundering of the war years local people showed little patience with troops quartered in the county. A series of killings helped turn this impatience into outright hostility. The first to involve a civilian, as far as can be ascertained, was the shooting of John Huson at South Cave near Hull in February 1641. Huson had been standing at a neighbour's door when he was hit by a trooper who was galloping through the village street firing at dogs.⁵²

51. Heywood, *Diaries*, vol. 2, p. 277. Cf. PRO, ASSI 45/6/1/20-28, 32-47.

52. Above, p. 140.

Elsewhere the presence of swaggering soldiers milling aimlessly around the streets stoked up bitterness in the population. In alehouses drink and bravado sparked off fighting.⁵³ As did competition for women: undertones of sexual rivalry and jealousy feature prominently in civilian-military tensions. At Leeds in 1647, for example, John Branton claimed that his wife had 'drunk with a soldier all the day until night, yea the middle of the night'. She then accompanied the soldier to a deserted house before returning home 'very ill drunk'. A quarrel followed in which Branton beat her to death.⁵⁴

As Chapter Four showed, the army's general indiscipline continued long after the conclusion of large-scale fighting in 1644-1645, and the assize records indicate that the murder of civilians by soldiers in the later 1640s was a familiar enough occurrence. At Oworm in 1648 a pair of soldiers 'gate crashed' a wedding party and as they were being hustled out killed the groom's father.⁵⁵ At Horbury, in the same year, a father and son were stabbed to death.⁵⁶ At

53. At York in 1640, for example, Christopher Crosbie claimed that while drinking in one of the city's alehouses a group of soldiers began to 'abuse him and call him rogue, and took [his] can and broke it upon his head'. When he called for help the townspeople responded by drawing their swords and attacking the soldiers: in the ensuing *mêlée* one soldier was killed: PRO, ASSI 45/1/2/8.

54. PRO, ASSI 45/2/1/35-37. Cf. ASSI 45/1/2/15.

55. PRO, ASSI 45/2/2/115-16.

56. Zachary Grey, *Examination of the third volume of Neale's history of the puritans*, p. 66; PRO, ASSI 45/2/2/66-71.

a Holmfirth alehouse, also in 1648, a soldier, incensed at the sarcastic welcome he received, killed John Oldfield, whose offence had been to say, 'we must help winter you ... you are always oppressing us'.⁵⁷ Villagers and townspeople who attempted to recover seized belongings were also attacked and, on occasion, killed.⁵⁸ Assize depositions, coroners' inquisitions, indictments and other sources dating from 1645 to 1649 show that, besides these killings, soldiers were blamed for murders at Bradford, Pudsey, Quarmby, Gisburne, Wakefield, Hemsworth, Coxwold and Mexborough.⁵⁹

The civilian population was not always entirely passive in the face of attacks. Although the assize records do not make any mention of club associations (known to have been active in Yorkshire in the 1640s), they do contain references to individual acts of civilian resistance. These tended to be spontaneous. At Doncaster in 1647, for example, three local people beat and killed a drunken soldier who had broken into a house and pillaged it in search of drink.⁶⁰ At Sewerby in the East Riding a trooper was killed by a local yeoman after an argument over assessments.⁶¹

57. PRO, ASSI 45/2/2/111-12.

58. HMC, Portland MSS, vol. 1, p. 365; PRO, ASSI 45/4/3/31-33.

59. PRO, KB 9/842, m. 11; ASSI 45/1/5/6-11; 45/2/1/102, 290, 45/2/2/12-13, 86-88, 121-24; 45/3/1/213; J. Rushworth, *Historical collections*, vol. 7, p. 391.

60. PRO, ASSI 45/2/1/93-97.

61. PRO, ASSI 45/2/1/158-60.

Improved discipline in the 1650s helped to stabilise relations between the military and the civilian population, but there were persistent outbreaks of violence, although by now more isolated. Soldiers remained quarrelsome, antagonistic towards civilians and quick to use physical force in the resolution of disputes. In addition, the army's reputation for religious radicalism became, as the 1650s wore on, an important source of suspicion among the more conservative-minded, alienating garrisons from their hosts and, on occasion, leading to physical confrontation. In a Slaidburn alehouse in 1656 an argument broke out between local people and two soldiers under General Fleetwood. According to the civilians, Ambrose Mitton, a local man, 'did reason' with the soldiers 'concerning religion'. One of the soldiers, who, it was later said, aggressively proclaimed himself and his comrade to be Quakers 'and so would live and die', 'did throw a trencher' at Mitton. The soldiers, for their part, claimed that their adversaries were 'cavaliers', and that they had ridiculed their religious affiliations. Fighting erupted during which Mitton was stabbed to death.⁶²

Events like these reveal that during the 1650s there was a constant undercurrent of civilian-military

62. PRO, ASSI 44/6 (depositions of Bridget Parker et al, October 15-22, 1656)

tension, and that the problems for law enforcement caused by the military presence did not die out with the conclusion of large-scale fighting. Although it is impossible to gauge the real number of unlawful killings perpetrated by soldiers (surviving records show that twenty-seven soldiers were indicted for homicide at York assizes between 1641 and 1658 (Table 4.4)), it is clear that the profile of reported homicide was significantly influenced by the illegal activities of men under arms.

IV

In this survey of crimes against the person the emphasis has been on typicality, on the commonest events that gave rise to homicide charges. Some insights into the place of violence can also be glimpsed from the atypical. The assize depositions contain information about homicides arising out of bizarre circumstances which nevertheless indicate something of the nature of the society of the time and the place of violent behaviour in it.

For example, the brutal murder of Beatrice Hutchinson in the hamlet of Rosedale in the north Yorkshire moors by her son, daughter and son-in-law was more than a straightforward domestic homicide. It was alleged that the woman's son, Samuel, attacked his mother with a chisel, saying 'Let us set our feet upon this stiff-necked king that will not bow'. The dead

woman's husband described the attackers as being in 'a distracted condition', and blamed a certain Nathaniel Gill for this. Gill, he alleged, had read 'them certain writing concerning religion after which writings so read they were discontent'.⁶³ By the time of this murder, in 1647, the authorities in Yorkshire were already concerned about what they saw as the pernicious effects of the spread of radical sects. Shortly afterwards a Ranter was hanged at York 'for denying the Deity, Arian-like'.⁶⁴ And the arrival of Quakerism at Malton (less than fifteen miles from Rosedale) was to be described as inducing 'entranced madness'.⁶⁵ As far as is known the brutal slaying of Beatrice Hutchinson was the only case in this period of a murder influenced or incited by religious fervour. On the other hand, as the defenders of the social order noted often enough, especially once Quakerism had reached Yorkshire, religious radicalism undermined the family hierarchy and subverted discipline among wives and children. The distracted killers of Beatrice Hutchinson may have been unique, but at the very least they reinforced the current anxieties about the dangers the sects posed.

63. PRO, ASSI 45/2/1/146.

64. Cited in A.L. Morton, *The world of the Ranters*, p. 104. The original papers in this case have not, apparently, survived.

65. Above, pp. 163-64.

Two further unusual cases merit attention. The first was a murder witnessed by William Bramham. Bramham deposed that:

'he being in the fields of Kippax, suddenly heard the voice of one unknown craving for his life, whom by his language he apprehended to be a Scot. Whereupon this informant, coming nearer and looking over a hedge by the highway side, said, "he (meaning the said supposed Scot) is a Christian". Whereunto [Richard] Halstead replied, "who is that that saith he is a Christian"? This informant also saith that he saw the said Halstead give the said supposed Scot divers blows upon the head with his sword, and saying "thou dead rogue". And this informant, seeing the said supposed Scot mortally wounded, passed by and went away about his business, and saith that in his return the same way he found him dead upon that place.'"

The significance of this is that the incident took place on September 29, 1651, slightly more than three weeks after the battle of Worcester; a time when anti-Scottish feeling was running high. It was a racial murder, and not the only one. On September 7, 1651, Agnes Tangate and her husband were travelling home from their son's farm where they had been helping with the harvest when they were overtaken by a band of troopers near Ilkley. The pair were thought to be Scots, although they were in fact from Cumberland. One soldier, Thomas Tutin, killed Agnes, excusing it by saying that 'she was a Scotch woman, and that the women in Scotland had murdered many English, and ... he would kill more of them if they came in his way'. When brought before the local JP Tutin was indignant. 'They

charge me with killing of the woman,' he told a fellow soldier, 'and she was but a Scotch woman.'⁶⁷

If the verdicts and punishments that resulted are any pointer, these incidents hint at ambivalent attitudes towards the prosecution of murder. The killing of two innocent people did not provoke any visible outrage. It is perhaps a comment on the degree to which this virulently anti-Scottish feeling, fed by memories of troops quartered in the county and heightened by the recent Worcester campaign, was shared in Yorkshire that although Halstead and Tutin were both arraigned on murder charges (at the same assizes), the former was acquitted; Tutin must have also tapped some vein of sympathy in the court despite the mistake over his victim's nationality: he could count himself lucky that he was convicted of manslaughter and granted clergy since the witnesses' depositions were unanimous that his attack was completely unprovoked.⁶⁸

V

There is little direct evidence of any similar ambivalence where infanticide was concerned. It was a comparatively rare offence, or at least rarely

67. PRO, ASSI 45/4/1/174-75. Cf. ASSI 45/4/1/38-39, depositions relating to the robbery of Robert Moore by two soldiers on October 7th, 1651. One of the soldiers confessed to robbing Moore and added 'that if he had more he would have taken it being he was a Scot'.

68. PRO, ASSI 47/20/6/731v.

indicted. Between 1641 and 1658 surviving records show that twenty-seven women were tried at assizes as principals (there was one male accessory); all but two were described as spinsters, and several were maidservants.⁶⁹

The standard allegation was that the mother concealed her pregnancy, delivered the child in secret and then killed it shortly afterwards. Because of the marital status of most accused, the majority of cases fell under the terms of the statute 21 James I, c. 27. This effectively reversed the burden of proof by providing that if the mother of an illegitimate child concealed the birth she was liable to the penalty for murder if the child was subsequently found dead, even if it had been stillborn.⁷⁰

According to J.M. Beattie, in the second half of the eighteenth century a growing feeling that the act was excessively harsh was one of the factors behind a drop in the number of infanticide cases coming before

69. The exceptions were a married woman and a widow. For a discussion of the meaning behind the designation 'spinster' see C.Z. Weiner, 'Is a spinster an unmarried woman?'. The status of women accused of infanticide is discussed by R. Malcolmson, 'Infanticide in the eighteenth century', pp. 192-93, 202-204; by Beattie, *Crime and the courts in England*, p. 114; and by P.C. Hoffer and W.E. Hull, *Murdering mothers: Infanticide in England and New England, 1558-1803*, ch. 4. For examples of maidservants questioned as suspects see PRO, ASSI 45/1/5/48 and 45/5/5/41-47.

70. Hale, *The history of the pleas of the crown*, vol. 2, pp. 287-88. Married women accused of killing a newborn baby were charged with the common law offence of murder.

the courts and a decline in the conviction rate.⁷¹ In the seventeenth century, however, a sterner attitude prevailed as to the crime itself and the position in which unmarried pregnant women found themselves. If the fact of their pregnancy became widely known they were liable to a variety of severe formal and informal sanctions which could lead to the loss of reputation, and, if they had no clear rights of settlement, to expulsion from the township, with all the hardship that entailed. The unenviable position of the unwed expectant mother is strikingly illustrated by the experience of Anne Boyes, 'a poor, impotent woman'. When 'great with child and in strong labour' she was loaded onto a horse by the local constable and overseer, eager to spare themselves and their neighbours the additional expense of looking after the family, and led across the parish boundary where the same day the baby was born dead.⁷² It is not hard to imagine the reasons why some women in Anne Boyes's situation attempted to hide their condition.

However, it is doubtful whether many succeeded.⁷³ Villagers and townspeople in the seventeenth century took a keen interest in their neighbours and their

71. Blackstone, *Commentaries on the laws of England*, vol. 4, p. 198; Beattie, *Crime and the courts in England*, pp. 117-24.

72. WYRO, QS 4/4, f. 42; PRO, KB 9/859, m. 455.

73. Some did, despite the obvious difficulties. A neighbour of Isabel Tompson, charged with murdering her infant son, testified that she had known of no 'sign or token why the said Isabel should be with child': PRO, ASSI 45/5/3/108-15.

neighbours' doings. Single women were closely monitored, the village worthies ever vigilant for signs of sexual activity. Thus the constable of Billingley fixed his attention on Anne Peace who, he claimed, had 'for a long time last past lived [a] very suspicious and lewd life'. After some time he suspected Peace 'to be with child', and when no child appeared he 'did take upon him the pains and care' to get a warrant from a JP to order a search of Peace's body. Two 'good and sufficient' women conducted the search and found milk in her breasts; shortly afterwards the body of a new-born baby was discovered in the suspect's house.⁷⁴

Once a body had been found and reported to the authorities, magistrates and coroners were concerned to establish two things: first, was the delivery 'privily done'; and second, was the child born alive. The former, which if proved was taken as strong presumptive evidence of guilt, was easily established, and most suspects, faced with the testimony of their neighbours, quickly conceded it. Several claimed that the onset of labour had been so unexpected that they had been unable to summon assistance. Isabel Goodison maintained that about four months after becoming pregnant she suddenly became sick, causing 'her conception to come forth from her'; and which she then threw 'over the wall into the pinfold'.⁷⁵ Another woman told the investigating

74. PRO, ASSI 45/5/7/73-77.

75. PRO, ASSI 45/1/5/46.

magistrate that she had suddenly come into labour 'by the side of a well', and with no one there to help her the baby accidentally slipped into the water and drowned.⁷⁶

Under the terms of the Jacobean statute explanations like these, even if they were believed, did not count as a defence. If it was established that the mother had given birth in secret then the criteria for a *prima facie* case had already been met (if the child was illegitimate). The act also made irrelevant from the point of view of assessing criminal liability the issue of whether the child had been born alive or dead. However, magistrates and coroners usually asked questions to clarify this point. Since exposure, suffocation and drowning were common methods of inflicting death, there were forensic problems.⁷⁷ In an effort to determine the cause of death, midwives, or those who laid the body out for burial, were consulted about the state of the corpse. But their testimony, like that of other 'expert' witnesses called before coroners, was rarely conclusive: Anne Leake, for example, could say no more than that 'it was a fair liking child to her thinking'.⁷⁸

76. PRO, ASSI 45/1/5/48. Isabel King said that she unexpectedly fell into labour at night and that although she tried to attract help no one answered her calls: ASSI 44/6 (deposition of Isabel King, April 10, 1654).

77. See Keith Wrightson, 'Infanticide in earlier seventeenth-century England', p. 15, on methods of killing.

78. PRO, ASSI 45/5/1/107.

It was to overcome this difficulty that the 1624 statute was enacted. It was unnecessary for prosecutors to show that the child had been born alive. Guilty verdicts were returned even when there was supporting testimony to corroborate the accused's claim of a stillbirth. Anne Peace, who had kept her pregnancy secret and given birth alone, claimed that she had never felt the child move inside her, and that it was stillborn. The women who searched her thought this was likely: it was premature, they deposed, 'about the half birth' and 'born dead'. This did not help Peace. She was arraigned and executed." Questioning to establish the cause of death thus had no evidentiary value; instead, it may have been directed towards providing a basis for a plea to respite execution, although clearly, in Peace's case, if this was the intention, it was unsuccessful.

Women accused of killing older children were indicted for the common law offence of murder. Prosecutions of this kind were less common than those under the 1624 statute, the evidence for it arising mostly from cases in which the single mothers were vagrant or itinerant, and whose children died on the road. In such cases it was difficult to decide whether death was due to ill-health caused by undernourishment

79. PRO, ASSI 45/5/7/73-77; 42/1, f. 40. Similarly, the confession of Isabel King that she, 'being a single woman and intending to have [the birth] concealed', was sufficient to condemn her, even though she also maintained the child had been still-born: PRO, ASSI 44/6 (depositions of Anne Tailor et al, March 21, 1654, and indictment of Isabel King, Summer 1654).

or exposure, to voluntary neglect, or to a deliberate act of violence. This made it important to establish the state of the child's health before death, and coroners and magistrates busied themselves on this point. The magistrate investigating the death of Mary Leng's child was told by one witness that shortly before death it had been 'indifferent well'. The witness added that 'the mother had not milk enough'.⁸⁰ Anne Lockwood deposed that her one-month-old child, born forty miles north of London, was sick by the time she reached York where she tried to have it cured of the king's evil. As she travelled towards Settrington the child's condition worsened and it died. Two women who were working in the fields nearby gave evidence that when they had seen it, the child had indeed been 'very weak'.⁸¹ If, as in these cases, the accused could show that the child had been in poor health the chances of acquittal were high. Talbot and Lockwood, for example, were both acquitted, and Leng, although convicted, was later pardoned.⁸²

In every prosecution for infanticide at York assizes in this period the principal was female. What role, if any, did fathers have in the disposal of unwanted babies? What does their absence from the court records signify? It is clear that the identity of the

80. PRO, ASSI 45/5/5/41-47.

81. PRO, ASSI 45/1/4/34, 70-71.

82. PRO, ASSI 44/2 (indictment of Anne Lockwood, Summer 1642); 44/7 (indictment of Katherine Talbot, Summer 1656); 42/1, ff. 15, 148v.

fathers in most of the cases was known; often it was the defendants themselves who divulged their names.⁸³ Some fathers fled before the child was born; others were soldiers whose stay in the locality was temporary, thus ruling them out of the proceedings.⁸⁴ But others, who were available for questioning, were not examined, let alone prosecuted, and magistrates and coroners do not seem to have expressed much interest in uncovering any evidence of their collusion. This may have stemmed in part from an unwillingness to damage the reputation of locally prominent men, masters who made their maidservants pregnant. It was also consistent with the rhetoric behind the 1624 statute: the burden of guilt, legal and moral, fell primarily on the mother. Most seventeenth- and early-eighteenth-century commentators reserved their worst invective for the woman: termed 'lewd whores' by Zachary Babington; 'merciless mothers' by Daniel Defoe; 'monsters of inhumanity' in the words of Joseph Addison.⁸⁵ There was a powerful bias operating against the mother which worked, intentionally or not, to protect the father from criminal responsibility. The strength of feeling running against the crime itself and those accused of

83. All the women examined in the assize depositions who admitted to having been pregnant named the father.

84. For example, PRO, ASSI 45/1/5/46, 48.

85. Zachary Babington, *Advice to grand jurors in cases of blood*, p. 174; Defoe and Addison cited in Malcolmson, 'Infanticide in the eighteenth century', pp. 189-190.

it is reflected in the punishments awarded at infanticide trials: the capital conviction rate at York assizes was almost 40%, more than twice as high as for property offences and homicides.⁸⁶

VI

The horror with which the killing of a new-born infant was viewed meant that infanticide was probably more consistently reported than homicide. As we have seen, manslaughters and murders did not always come to the attention of the authorities, and the figures derived from indictments and coroners' rolls give a misleading impression of the long-term patterns in the incidence of violent death. In the short term, however, the depositions suggest that the military presence was responsible for boosting the number of unlawful killings, something there is statistical evidence for (Tables 5.1 and 5.2).

The reasons for the selectivity in reporting homicide have already been set out. However, it is worth emphasising two of them. First, as the depositions make clear, most homicides arose out of spontaneous acts of violence, in which drink frequently

86. Of the twenty-seven principals indicted, fifteen were convicted and ten executed. The sample of verdicts and punishments is, of course, small, but it fits the general picture for the early and mid seventeenth century: see Wrightson, 'Infanticide in earlier seventeenth-century England', p. 15; Sharpe, *Crime in seventeenth-century England*, pp. 135-37. For conviction rates in other cases see Chapter Nine.

played a part. They were not marked by any obvious brutality: in most cases a single blow to the head, one or two knife wounds. Only occasionally was there any indication of deliberate intent to kill. Sometimes the victim had precipitated the argument with 'provoking speeches' or behaviour; some witnesses clearly believed that the victim had 'got what was coming to him'. In a society in which violence played a prominent role in human relations, in which assaults were usually considered private matters, and in which 'broken heads' were to be borne with fortitude, sudden violent death could be simultaneously shocking and understandable. If the assailant showed contrition, if the victim's family were prepared to forgive, the simplest solution was to avoid calling in the coroner and to work out a settlement.

Another feature of seventeenth-century homicide that reinforced the tendency towards selective reporting was the position occupied by the offender. If the depositions and indictments are any guide, they were almost always local men. They were not 'hardened criminals'. Only a handful tried to flee; only a handful were arraigned at their trials in connection with other offences. Unlike the 'lewd whores' who murdered their children, they did not normally attract any kind of vitriolic condemnation. When colluding in the concealment of a homicide, therefore, the seventeenth-century villager did not have to struggle with his conscience or feel he was protecting a moral

reprobate from his just punishment. A more 'just' outcome might be achieved through the mediation of neighbours and exclusion of officialdom.

What is noticeable from the legal records is the speed with which men reached for their weapons. Although even the fullest records do not tell the whole story about the relationship between victim and assailant, what comes most forcibly through is the shortness of the fuse in people; the propensity to resort to violence in answer to even minor insults or imagined wrongs. This lack of restraint and capacity for disproportionate retaliation was demonstrated by men of all classes. It is this feature that most vividly characterises the nature of violent behaviour in early-modern England.

Chapter Six

Offences and offenders 2. Crimes against property

The tones of alarm, and of panic, with which contemporary descriptions of crime and lawlessness in Tudor and Stuart England were suffused give the impression of a society in which the common peace was under constant threat from a vicious, cunning, irredeemable criminal sub class.' As the previous chapter argued, such a view does not stand up to the reality that comes through from the legal records where crimes against the person, and those indicted in connection with them, are concerned. But what of property offences and offenders? Who committed property crimes, and in what circumstances? To what extent was the security of property threatened by the special conditions of the Civil War and its aftermath?

I

Tables 6.1 and 6.2 show the fluctuating levels of property crimes prosecuted at West Riding quarter

1. For example, Edward Hext's famous (and near-hysterical) letter to Burghley (1596) in *Tudor economic documents*, vol. 2, ed. R.H. Tawney and E. Power, pp. 339-46; *William Lambarde and local government*, ed. C. Read, p. 68; Michael Dalton, *The countrey justice*, pp. 205, 385; cf. J.S. Cockburn, 'The nature and incidence of crime in England, 1559-1625', p. 48.

TABLE 6.1
Property crimes tried at West Riding quarter sessions, 1638-1665
(annual totals)

	INDICTMENTS		PERSONS	
	n.	%	n.	%
1638	175	11.1	249	12.4
1639	77	4.9	100	5.0
1640	61	3.9	96	4.8
1641	64	4.1	82	4.1
1642	42	2.7	72	3.6
1647	57	3.6	68	3.4
1648	36	2.3	46	2.3
1649	107	6.8	145	7.2
1650	77	4.9	93	4.6
1651	60	3.8	75	3.7
1652	55	3.5	64	3.2
1653	73	4.6	84	4.2
1654	41	2.6	48	2.4
1655	36	2.3	34	1.7
1656	60	3.8	69	3.4
1657	69	4.4	80	4.0
1658	86	5.5	115	5.7
1659	66	4.2	74	3.7
1660	51	3.2	68	3.4
1661	78	4.9	94	4.7
1662	60	3.8	77	3.8
1663	59	3.7	68	3.4
1664	40	2.5	46	2.3
1665	46	2.9	64	3.2
TOTAL	1576	100.0	2011	100.2

NOTES: 1. Excludes surviving *ignoramus* files.
2. Persons indicted for more than one property crime at the same sitting of the court have been counted only once.

SOURCE: WYRO, QS 4/1-8.

sessions and York assizes in this period. More will be said of the meaning behind these recorded levels later. We begin with a breakdown of the broad term 'property crime'. This encompassed a wide range of criminal activity (Tables 6.3-6.4) which the law did not view as an undifferentiated whole. Larceny, in one form or another, was the preponderant variety; but within it

TABLE 6.2
Property crimes tried at selected assizes, 1641-1658

	INDICTMENTS		PERSONS	
	n.	%	n.	%
L.1641	55	5.7	56	5.8
S.1646	61	6.4	61	6.4
L.1647	61	6.4	63	6.6
S.1647	83	8.6	60	6.2
L.1648	88	9.2	89	9.3
S.1648	24	2.5	24	2.5
L.1649	61	6.4	60	6.2
S.1649	73	7.6	87	9.1
L.1650	64	6.7	64	6.7
S.1650	55	5.7	54	5.6
L.1651	52	5.4	59	6.1
S.1651	51	5.3	46	4.8
L.1652	45	4.7	50	5.2
S.1655	27	2.8	29	3.0
L.1656	27	2.8	23	2.4
S.1656	31	3.2	28	2.9
L.1657	28	2.9	35	3.6
S.1657	25	2.6	22	2.3
L.1658	49	5.1	51	5.3
TOTAL	960	100.0	961	100.0

- NOTES:
1. Excludes surviving *ignoramus* files.
 2. Persons indicted for more than one property crime at the same sitting of the court have been counted only once.
 3. Only courts for which records are complete have been included.
 4. Although a gaol book survives for the period 1658-1672 (PRO, ASSI 42/1) with lists of prisoners arraigned at York assizes it does not carry details about the crimes of which they were accused. Indictments for the later 1650s and 1660s are incomplete.

SOURCES: PRO, ASSI 44/1-8, 19; 47/20/6.

was a number of different offences which were distinguished according to the type and value of the goods, and the manner in which the theft was conducted (the type of goods taken in simple larcenies are shown in Table 6.5). At one end of the scale were minor felonies, such as the pilfering of food or sheep-stealing. At the other end were crimes like horse-

TABLE 6.3
Property crimes tried at West Riding quarter sessions, 1638-1665
(by category of offence)

	INDICTMENTS		PERSONS	
	n.	%	n.	%
SIMPLE LARCENY (<i>type of goods stolen</i>)				
household goods	289	18.3	344	16.6
sheep	277	17.6	367	17.7
food	158	10.0	236	11.4
cloth	112	7.1	142	6.9
poultry	71	4.5	93	4.5
horses	69	4.4	82	4.0
tools	64	4.1	70	3.4
money	59	3.7	62	3.0
cattle	57	3.6	67	3.2
swine	10	0.6	11	0.5
miscellaneous	165	10.5	211	10.2
sub total	1331	84.4	1685	81.4
AGGRAVATED LARCENY				
breaking & entering	38	2.4	60	2.9
burglary	16	1.0	24	1.2
robbery	14	0.9	20	1.0
sub total	69	4.3	105	5.1
POACHING	140	8.8	234	11.4
ARSON	3	0.2	3	0.1
COINAGE OFFENCES	1	0.1	1	0.05
MISCELLANEOUS	34	2.2	40	1.9
TOTAL	1576	100.0	2068	99.95

- NOTES:
1. Persons indicted for different categories of property crime have been counted once for each category. This accounts for the inflated total number of persons compared with the total in Table 6.1.
 2. Other notes as for Table 6.1

SOURCE: As in Table 6.1

stealing which was viewed with particular gravity owing to the value of the animal, its vulnerability to theft, and the ease with which the culprit was thought to profit. The law was equally grave in its view of larcenies with aggravating circumstances: breaking into a home to commit theft (classed as breaking and entering if it occurred during daylight hours; burglary if it was at night); and robbery (theft from the

TABLE 6.4
Property crimes tried at selected assizes, 1641-1658
(by category of offence)

	INDICTMENTS		PERSONS	
	N.	%	N.	%
SIMPLE LARCENY (<i>type of goods stolen</i>)				
horses	248	25.8	230	22.2
cattle	152	15.8	148	14.3
sheep	104	10.8	124	12.0
household goods	75	7.8	81	7.8
cloth	60	6.2	77	7.4
money	36	3.7	38	3.7
food	28	2.9	32	3.1
tools	3	0.3	4	0.4
poultry	3	0.3	3	0.3
swine	3	0.3	3	0.3
other	24	2.5	22	2.1
<i>sub total</i>	736	76.4	762	73.6
AGGRAVATED LARCENY				
burglary	76	7.9	99	9.6
robbery	59	6.1	67	6.5
breaking & entering	24	2.5	30	2.9
<i>sub total</i>	159	16.5	196	19.0
COINAGE OFFENCES	56	6.0	64	6.2
POACHING	4	0.4	8	0.8
ARSON	4	0.4	4	0.4
MISCELLANEOUS	1	0.1	1	0.1
TOTAL	960	99.8	1035	100.1

NOTES and SOURCES: As in Table 6.2.

person). The special opprobrium attached to these crimes was reflected in the Tudor legislation that excluded them from benefit of clergy.²

Larceny, in its simple and aggravated forms, makes up between 80% and 90% of all property offences. Two crimes comprise most of the remainder: coinage offences, classed as treason; and poaching, which was a misdemeanour.

2. The acts of 4 Henry VIII, c. 2; 1 Edward VI, c. 12; 5 & 6 Edward VI, c. 9; 8 Elizabeth I, c. 4; 18 Elizabeth I, c. 7; 39 Elizabeth I, c. 15 excluded burglary, housebreaking (when this involved an occupant who was 'put in fear'), highway robbery, and horse-stealing.

TABLE 6.5
Categories of stolen goods in cases of simple larceny tried at
quarter sessions and assizes in selected years

	INDICTMENTS		PERSONS	
	N.	%	N.	%
1. Horses	229	23.6	234	21.0
2. Sheep	180	18.5	233	20.9
3. Cattle	147	15.1	149	13.4
4. Household goods	118	12.1	124	11.2
5. Food	80	8.2	122	10.9
6. Cloth	72	7.4	79	7.1
7. Money	40	4.1	41	3.7
8. Tools	19	1.9	19	1.7
9. Poultry	18	1.8	22	2.0
10. Swine	8	0.8	6	0.5
11. Miscellaneous	61	6.3	86	7.7
TOTAL	972	99.8	1115	100.1

NOTE: 1. The figures are for years in which both assize and quarter sessions records are complete: 1647-1651 and 1656-1657 (inclusive).

SOURCES: PRO, ASSI 44/1-8, 19; 47/20/6; WYRO, QS 4/1-8.

These are the bare bones, which we now attempt to flesh out, beginning with the offender who in the seventeenth century was probably considered the most serious threat to property - the highwayman.

II

Often characterised as a desperate and calculating figure, the highwayman was marked out from most ordinary offenders. It is worth mentioning, however, that not all highwaymen conformed to this stereotype. Some cut pathetic figures as criminals: they were spectacularly unsuccessful, robbing victims of a few shillings, failing to make good their escape and ending

up on the gallows.³ But many got away with reasonably large sums, and a few gained substantial profits. Moreover, although there is no recorded instance of any victims being killed, some robberies were carried out in brutal circumstances.⁴ It was from this, as well as the large amounts of money they stole, that highwaymen earned their fearsome reputation.

That reputation was enlarged during the 1640s and 1650s when soldiers and ex-soldiers took to highway robbery. Henry Morton, part of the Royalist garrison at Pontefract during the Second Civil War, became well known as the leader of a gang of highwayman in south Yorkshire after the town's surrender. He was not apprehended until 1650, and at the Summer assizes was hanged. Evidently relieved at the removal of such a dangerous character the assize judges ordered payment of a £20 reward to the constable of Crigglestone who had captured him.⁵ Another member of the Pontefract garrison (during the First Civil War) was Captain Edward Holt. In addition to murdering an inhabitant of the town in 1645, Holt was part of a band of

3. For example, Daniel Arnold who was hanged at the 1658 Lent assizes for a highway robbery that netted him a hat worth 1s: PRO, ASSI 44/7; 42/1, f. 3.
4. For example, when William Hobson was robbed by two men near Bramham he offered no resistance but was beaten with a hedge stake, wounded 'in his head and in his members', and left lying on the moors: PRO, ASSI 45/2/1/225.
5. PRO, ASSI 45/2/2/89-91; 44/3 (three indictments of Henry Morton *et al*, Summer 1650); 47/20/6/387; 47/20/1/292, 294.

highwaymen preying on merchants travelling between Lancashire and the West Riding. His capture in 1648 also led to execution.*

Morton and Holt were by no means exceptional. Bands of soldier-highwaymen ranged across the county throughout the 1640s and, though on a lesser scale, the 1650s. In 1640 John Watson and Samuel Hancock were part of a gang operating near Hunmanby in the East Riding and in the forests around New Malton in the North Riding.⁷ In the early 1650s John Hudson and his accomplices committed several robberies in the East and West Ridings. A leading justice of the peace, Durand Hotham, followed the gang with a hue and cry when they fled to London, and was successful in having them arrested and brought back to Yorkshire for trial.*

The most promising prey for highwaymen, civilian or military, were the merchants and carriers travelling the major trade routes leading to and from York and the West Riding towns. The clothing towns in particular offered a potentially fruitful environment, and several robberies took place in their vicinity.⁸ Here trains of

6. Nathaniel Drake, *A journal of the first and second sieges of Pontefract*, p. 8; PRO, ASSI 45/2/2/64-65; 44/2 (two indictments of Edward Holt, Lent 1649); 47/20/6/752v.
7. PRO, ASSI 45/1/2/10-11; 47/20/6/735.
8. PRO, ASSI 45/4/3/65-72.
9. For example, PRO ASSI 44/2 (indictment of Edward Holt, Lent 1649) (near Halifax); 44/6 (indictment of Thomas Hagg, Summer 1655) (South Milford near Leeds); 44/7 (indictment of Timothy Thorpe *et al*, Lent 1657) (Southowram near Halifax); 44/7 (indictments of Joshua Moore *et al*, Lent 1658) (Harewood near Leeds, Rothwell near Wakefield, and Elland near Halifax); 45/2/1/225 (Bramham Moor near Leeds).

cloth merchants and their pack animals were ambushed as they picked their way along the deserted moorland passes. It was in the textile region that the most successful gang of highwaymen in this period operated. In December 1657 and January 1658, led by Joshua Moore of Rothwell, the gang staged a series of highly lucrative robberies. One victim alone was relieved of £250 in money and £40 worth of other goods.¹⁰ Since tens of thousands of people in the West Riding depended on the cloth trade for their livelihoods, attacks such as these must have caused widespread alarm.¹¹

Highwaymen were assisted by various accomplices. These were often lowly alehouse-keepers, but according to one man, 'there was several sufficient housekeepers in Doncaster that was setters to highwaymen'.¹² In addition to pointing out potential targets they provided shelter, food and horses. The latter were especially important, for mobility was the key to success, and in this the unsettled conditions of the 1640s and early 1650s worked to the highwaymen's

10. PRO, ASSI 44/7 (seven indictments of Joshua Moore et al, Lent 1658).
11. Other merchants travelling the same routes were also vulnerable: John Trevis of Clayton Mills near Manchester, a carrier, was robbed in near Halifax by a different gang as he was coming from Lancashire into Yorkshire with three horses laden with salt: PRO, ASSI 45/2/2/90.
12. PRO, ASSI 45/6/1/50.

advantage. One problem they faced in peacetime was how to move around the countryside without attracting attention - not an easy thing to do in a society with an intrinsic suspicion of 'strangers'. The Civil War did not lessen that suspicion, but the sight of bands of troopers arriving at dusk, lodging at a house or inn and starting out again at daybreak, and the comings and goings of the marching armies' motley trains, did at least accustom people to 'strangers' passing through. The irregular traffic of wartime helped highwaymen to avoid the kind of scrutiny that in quieter days they might have expected from curious villagers.

The problem of highway robbery was particularly acute during the 1640s and early 1650s, but it did not entirely disappear in later years. In the 1670s there were reports of robberies committed by bands twenty-strong.¹³ One of the most notorious highwaymen in Restoration England, John Nevison, was a Yorkshireman, born at Wortley near Rotherham. He was held in such awe that although there was a £20 reward for his capture he could walk unmolested through the streets of Wakefield. Nevison, like highwaymen before him, preyed on carriers, and it is a measure of his success that they thought it prudent to pay protection money.¹⁴

Indictments do not distinguish between robbers who had mounts and those who did not: some men charged with

13. BL, 578 d. 46, *Bloody news from Yorkshire...*

14. M.W. Garside, 'The social history of Halifax in the seventeenth century', p. 94.

robbery in the highway were apparently on foot. William Precious, for example, walked homewards with his intended victim after they had spent an afternoon together in an alehouse. According to the victim, when Precious saw him 'to be full of drink' he 'struck up his heels' and robbed him of over £2.¹⁴ Some of these robberies on foot were street 'muggings', but they were few and far between because, outside York and Hull, the county lacked large, built-up environments necessary to street thieves.

Only slightly more common, to judge from the records, were cutpursing and pickpocketing. They occasionally took place in alehouses where men, befuddled with drink, presented thieves with easy pickings.¹⁵ But busy markets and fairs were the favoured places for cutpurses and pickpockets. Here men and women gathered with money to spend and thieves felt secure among the crowds. When Elizabeth Norfolk was at Barnsley 'in a great throng of people in the corn market' a woman followed her and 'did put her hand into her ... pocket and did take out her said purse'.¹⁶ Similarly, Ann Underwood was at Selby market when 'she presently missed her purse, finding only a part of the purse strings, which was tied to her girdle'.¹⁷

14. PRO, ASSI 45/1/5/51-52.

15. PRO, ASSI 45/5/4/24; 45/5/7/108-10.

16. PRO, ASSI 45/4/2/54.

17. PRO, ASSI 45/5/1/45. Other robberies were recorded at markets and fairs at Leeds, Northallerton and New Malton: ASSI 45/2/1/88-89a; 45/5/2/80, 97-100.

Such cases are too few in number to allow any kind of statistical analysis. It is an interesting question whether such robberies show up so rarely in the records because they occurred infrequently, or because offenders were reasonably 'professional' and skilled in avoiding detection. Some were certainly experienced thieves: they operated with a 'partner' and went about their business with a deftness that left victims feeling nothing as their pockets were rifled or their purse-strings snipped.¹⁸

III

The largest group of offenders in the *aggravated larceny* category - burglars and housebreakers - also included some skilled thieves whose activities netted them valuables and large sums of money. In three burglaries at Woodhouse Hall, home of the Earl of Strafford, Appleton Turner made off with miscellaneous household goods valued at about £14.¹⁹ William Wansley relieved his victim of £22 in money and clothes worth nearly £2 in a single break-in.²⁰ One gang of burglars stole money and chattels worth between £20 and £30 from

18. PRO, ASSI 45/2/1/88-89a; 45/5/2/80.

19. PRO, ASSI 44/3 (three indictments of Appleton Turner, Lent 1650).

20. PRO, ASSI 44/7 (indictment of William Wansley, Summer 1659).

the house of George Nicholls in Clayton. The determination with which the local magistrate, Henry Tempest of Tong, pursued this particular gang indicates how seriously their activities were taken.²¹

Other thieves specialised in breaking into shops, often those of haberdashers or mercers.²² The number of premises specified as such is small (they are normally identified only in depositions) but it is likely that some of the buildings described in indictments as 'dwelling houses' from which large quantities of cloth or yarn were stolen also served as shops.²³ Not all shop-breakings were carried out by experienced or skilled burglars: many were spontaneous and opportunistic, as the case, if we are to believe his statement, of seventeen-year-old apprentice Richard Laurence shows. He told the examining magistrate that:

21. Tempest questioned witnesses over a five-month period and sent out warrants to all West Riding constables to apprehend the suspects and bring in further witnesses for interrogation: PRO, ASSI 45/3/1/124-28, 155-57.
22. For example, the men who broke in the shop of Thomas Wright, a mercer. The break-in was evidently the work of skilled thieves: a window was expertly broken open and silks and laces worth about £100 removed: PRO, ASSI 45/4/3/53. Cf. ASSI 45/1/5/72.
23. for example, the burglary at the house of John Loft in which £16 worth of woollen cloth was stolen: WYRO, QS 4/1 (indictment of William Thompson, 1638 Epiphany sessions, Wakefield).

'having occasion to ease himself [he] went aside the way into a little yard ... where he espied a board or little window broken or fallen down, and looking in thereat he did see shoes hanging up ... and took out of the room aforesaid four pairs of shoes.'²⁴

But to portray all burglars and housebreakers as Richard Laurences would be misleading. There were gangs whose activities caused widespread terror, especially those made up of soldiers. Throughout the 1640s there were reports of bands of marauding soldiers who broke into homes and carried off valuables. At the height of the conflict there was little victims could do. At other times they sought legal redress, and it is from the efforts of those who brought prosecutions that we get information about the break-ins committed by soldiers. Miles Bilton, a Hampsthwaite yeoman, had his house burgled and stable broken into by soldiers during the first siege of Pontefract. Holding a sword to his chest and threatening his wife they escaped with a horse, linen and almost £20 in money.²⁵ Other break-ins committed by soldiers that resulted in legal action were reported at York, Fenton and Farndale.²⁷

24. PRO, ASSI 45/3/2/94.

25. PRO, ASSI 44/4 (indictment of Christopher Plewes, Lent 1651); 45/3/2/119.

26. PRO, ASSI 45/1/3/27 (see gaol calendar for the charges in this case: 47/20/6/733); 45/4/2/63 (for details on the offender, Thomas Teston: 45/3/1/200-1; 45/4/3/92-95); 45/4/1/59-63.

Burglaries and break-ins rarely involved physical violence. Even those committed by soldiers (for which evidence is available) involved threats and verbal abuse rather than actual assault. But there were exceptions: for example, there was the carnage following the break-in at the house of Leonard Scurr, sometime curate of Beeston near Leeds. Scurr, 'a great schollar, of singular fine parts, of notable ingeny, mild temper, not easily provokt', was nevertheless an extraordinarily litigious man, and the archives of Chancery and assizes are peppered with his suits. His last quarrel was with some colliers he 'had bound to work for him as long as water run under Leeds bridg'. He commenced an action against them but the case never came to trial; instead, they broke into his house, robbed and then killed him, his mother and their maidservant, before burning down the house. The case attracted widespread attention, a narrative was printed and a crowd reputedly 30,000-strong gathered on Holbeck Moor to witness the execution of one of the felons.²⁷

Nor did most break-ins involve very valuable goods. Money accounted for the largest single category of property stolen, but the amount was usually quite trivial. Mathew Wilson gained only 18d in money from a break-in.²⁸ He was, it is true, at the bottom end of

27. Edmund Calamy, *The nonconformist's memorial*, vol. 3, p. 424; A.G. Matthews, *Calamy revised*, p. 430; Heywood, *Diary*, vol. 2, pp. 296-97; PRO, ASSI 44/7 (two indictments of Leonard Scurr *et al*, Lent, 1657 and Summer 1659); 42/1, f. 32.

28. WYRO, QS 4/3, f. 75.

the scale, but thieves seldom got more than a few shillings. The majority did not find money to take, and helped themselves instead to clothes, household linen and pewterware. A significant number of burglaries and break-ins involved the theft of food, usually no more than a sackful of corn, a flitch of bacon or some cheese. The thieves were not skilled or professional, nor were they carrying out their activities in gangs. They were often men and women, usually acting alone or in pairs, driven to desperation by poverty and hunger. Ellin Thornton, 'a wanderer', confessed to a burglary in 1649. She had removed a pane of glass from a window before putting her young son through it and into a room in order to steal some cheeses. She was later discovered living with her children in a kiln, and explained that she had been 'in great want, and not having any relief for a long time, so that she and her children were almost famished for want of meat'.²⁹

Aggravated larcenies, then, encompassed a divergent range of activity. The perpetrators included a relatively small number of men who planned their robberies with care and took calculated risks in order to steal large amounts of money; they also included some very pathetic people who stole food, linen or clothes out of desperation, with little or no planning, and with even less thought for the consequences.

29. PRO, ASSI 45/3/1/204-6.

IV

The greatest calculated risks were taken by counterfeiters. Men and women indicted for coinage offences were invariably dealt with at assizes (there is just one case of a man indicted at quarter sessions for uttering false coin). They were prosecuted under a series of statutes - the earliest was the act of 1351 - which defined counterfeiting gold and silver coin as treason. This legislation was consolidated and extended by two important Elizabethan statutes which provided that, 'It shall be high treason, to clip, wash, round or file current money'.³⁰ There were three main coinage offences: the first involved clipping the coin's edges which were then washed and rounded. (Such coin became known as 'clipped' or 'small' or 'light coin'; unclipped currency was 'big coin'.) The second was the actual counterfeiting operation - a complex and skilled affair involving specially forged moulds and the expert mixing of base metals (with the silver clippings sometimes added). The third offence was 'uttering', that is passing off the counterfeit coin as legal currency.

In normal times prosecutions for coinage offences were comparatively rare.³¹ Counterfeiting was thought to be more prevalent in the north, but although there

30. 5 Elizabeth I, c. 11; 18 Elizabeth I, c. 1.

31. Only 200 cases came before the courts of Surrey and Sussex between 1660 and 1800: J.M. Beattie, *Crime and the courts in England, 1660-1800*, pp. 191-92.

is a light sprinkling of references in court archives and official correspondence there is little to suggest that before the mid 1640s the problem was one of any significant dimensions.³²

This pattern of occasional prosecutions altered dramatically in the aftermath of the Civil War. Between 1646 and 1649 at least one hundred suspects were arrested and questioned; more than half were sent for trial. At the Summer 1646 assizes, the first to meet since 1642, seven indictments involving eight accused came before the court. This in itself represented an unusually heavy crop, but it was to be massively outstripped the following year when a total of twenty-six indictments were endorsed by the grand jury. The twenty-seven accused in these cases constituted more than 15% of the total gaol calendar for that year. It was in this year that Adam Eyre recorded in his diurnal that he 'exchanged 23s of light money ... for 18s 6d good money', an indication of how widespread clipping was at this time.³³ In 1648 and 1649 the number of prosecutions declined, but at eight and six cases respectively they were still abnormally high. After

32. There is only one reference to a coinage offence before 1646 in the assize records. In 1641 Marmaduke Feales was convicted at York assizes of possessing clipped coin. The main charge against Feales was of murdering his wife, and it is possible that the coinage offence was tacked on for good measure, perhaps to overwhelm the court with his criminality. There is no evidence that he belonged to a counterfeiting gang, or that the investigating authorities believed he did: PRO, ASSI 45/1/4/13; 47/20/6/734v.

33. Adam Eyre, *A dyurnall, or catalogue of all my accions and expences* ..., pp. 61, 66.

1650 the pre-War pattern re-emerged: there were no reported cases in that year, three in 1651, none in 1652.

The high level of prosecutions in the later 1640s was the direct result of the counterfeiters' ability to exploit the special conditions of the Civil War years. In the absence of an active judicial authority they were able to build up informal networks with accomplices in different parts of the county and in Lancashire.³⁴ In 1647 one witness claimed that he had known for some time about the activities of a local coiner but, 'the times being troublesome until now' had not reported them.³⁵ In the same year another witness referred to earlier 'troublesome times' and added that 'he never heard such things questioned till now of late'.³⁶ The counterfeiters had also been able to exploit a market need created by the growing demand for bullion - to satisfy urgent local requirements, especially those of the army, and to meet Parliamentary levies and tax demands. Coin was in increasingly short

34. There are occasional references to the military authorities taking action on complaints of coining during the height of the war years: PRO, ASSI 45/2/1/187 (in this case officers in the Earl of Newcastle's army). But in general it seems that the coiners encountered little difficulty in the period 1642-1645. According to information presented to the Council of State in 1652 counterfeiting had become so widespread because legitimate moulds had fallen into the hands of coiners after the surrender of garrisons at York and elsewhere: *Calendar of state papers, domestic, 1651-1652*, pp. 261-62.

35. PRO, ASSI 45/2/1/134. Other depositions made in the later 1640s state that coiners were active in the period 1642-45: for example, ASSI 45/1/5/21; 45/2/1/30-31, 173.

36. PRO, ASSI 45/2/1/137.

supply, so much so that in some places the authorities were forced to sanction the use of 'light coin' in order to facilitate vital trade. By making good some of this deficiency the Yorkshire coiners of the 1640s were, in one sense, oiling the wheels of commerce.³⁷

Of course, the authorities did not see it in this light. And they had good reason for not doing so, for there were obvious disadvantages to trading confidence in having false coin infiltrated into the currency. English coin abroad, the Council of State was told in 1652, had a bad reputation. In Amsterdam it was discovered that a large proportion of the 20s pieces passed by English merchants was counterfeit; they turned out to be worth less than 4s each.³⁸ Concern at the potential damage to the county's precarious economy, which was so heavily dependent on the export trade, was almost certainly one of the factors influencing the scale and timing of the anti-counterfeiting campaign.

Another was the re-establishment of the organs of local government. Once the courts resumed regular sittings in 1645-1646 the round up began in earnest; it was to last approximately two and a half years. The most energetic steps were taken in Morley wapentake (which contained the important clothing towns of

37. The same phenomenon - 'market forces' stimulating counterfeiting activity - has been commented on by J. Styles, 'Our traitorous money makers', esp. pp. 173-77, and A. Macfarlane, *The justice and the mare's ale*, ch. 3.

38. *Calendar of state papers, domestic*, 1651-1652, pp. 261-62.

Halifax and Bradford) by the newly-appointed justice Henry Tempest of Tong. He authorised house searches in the Bradford-Halifax-Bingley-Keighley area which uncovered counterfeit coin, clippings, shears, mercury, moulds and other tools and materials. Assize depositions show that he examined seventeen men and women suspected of coinage offences between May 1647 and February 1649.³⁹

Other magistrates were also active. In the summer of 1647 Tempest's kinsman, Lord Ferdinando Fairfax, was rounding up members of an extensive network based in the Knaresborough-Ripley region of the West Riding.⁴⁰ Fairfax's activities are significant. Although the most senior and influential member of the commission of the peace his political commitments as a knight of the shire meant that he could rarely involve himself in the routine tasks of law enforcement.⁴¹ The fact that he played a leading role in this particular investigation is testimony to the authorities' resolve to bring the coiners before the courts. So too are the events following from Fairfax's interrogation of one suspect, Edward Smith. Smith implicated several confederates, and it was decided to use his testimony against the

39. PRO, ASSI 45/2/1/123-24, 129-32, 153, 215-20; 45/2/2/130-31, 78-79, 138-39, 149, 158-59; 45/3/1/214-16; 47/20/6/548-57, 750-61.

40. PRO, ASSI 45/2/1/235-37. Cf. ASSI 45/2/1/219.

41. There are only four sets of depositions certified by Fairfax to assizes between 1640 and 1648, two of which were concerned with counterfeiting: PRO, ASSI 45/2/1/54, 179-80, 235-37; 45/2/2/42.

other members of the gang in return for which Smith was granted bail and later pardoned. This is the only known instance during this period of an immunity deal being struck. Accomplice evidence was disliked by lawyers and judges and its use here is further testimony to the determination to smash the counterfeiters.⁴²

The records generated by the judicial clamp down reveal that the coining operations were urban-based, largely centred in the vicinity of the West Riding towns: there were arrests in Sheffield, Halifax, Bradford, Bingley, Keighley, Pontefract and Rothwell.⁴³ It was only in the towns that the men with the requisite skills were likely to be found together. The coiners needed a range of skilled craftsmen, particularly metal workers, such as blacksmiths, plumbers, wiredrawers and gunsmiths, or those whose trades brought them access to valuable metals, in particular whitesmiths.⁴⁴ It was from the West Riding towns too that contact with the Lancashire counterfeiters was easiest maintained: Robert Leach of Sowerby, for example, was used as a courier between

42. PRO, ASSI 44/2 (indictments of John Maultas, Steven Smith, John Marsingale and Edward Smith, Summer 1647).

43. PRO, ASSI 45/1/5/57; 45/2/1/38, 70-73, 76, 90-91, 123-24, 129-32, 153-54, 167, 198, 184-87, 296; 45/2/2/30-31, 78, 138-39, 158-59; 45/3/1/214-16. However, it was not an exclusively urban phenomenon. There were reports of coinage offences from some remote rural districts. For example, Goatland in the North Riding: ASSI 45/1/5/40-41; 45/2/1/70-77.

44. These trades are all mentioned in the depositions and indictments: see esp. PRO, ASSI 45/1/5/20, 40; 45/2/1/15, 90; 45/2/2/131; 44/2 (indictment of Isaac Firth, Summer 1647); 44/7 (indictment of Christopher Pawson, Summer 1657).

Rochdale and Halifax. He brought 'new coined' money to Lancashire and returned with clippings to supply a local coiner - Isaac Firth, a Halifax blacksmith.⁴⁵

It was the need for regular supplies of 'big coin' for clipping that also made towns attractive to coiners. For the supplier it could be a valuable trade: the risks were minimal and the potential profits substantial. One coiner promised the wife of a prospective supplier that her husband would be able 'to live like a man'.⁴⁶ Suppliers were paid a 'retainer' (one alehousekeeper was promised £10 a year), or a proportion of the value of the large coin they passed on (one man got 18d in the £1).⁴⁷ But in small villages and hamlets suppliers were unlikely to be able to satisfy the needs of larger networks. Moreover, as several coiners were to discover, recruiting accomplices to keep them supplied could backfire: they were often the 'weak links' in the chain, the first to divulge to the authorities what they knew.⁴⁸ It was safer to restrict the number of people 'in the know'; to have one or two large suppliers was preferable to having many small ones. Urban shopkeepers, pawnbrokers and victuallers with a relatively large turnover of

45. PRO, ASSI 45/2/1/167. For other references to links with Lancashire: ASSI 45/2/1/214; 45/2/2/1-2, 130-31.

46. PRO, ASSI 45/2/1/214.

47. PRO, ASSI 45/2/1/235, 277, 280.

48. PRO, ASSI 45/2/1/140, 154, 713.

coin, or silversmiths and goldsmiths with their unrestricted access to precious metals were the favoured suppliers.⁴⁹

Finally, being in towns meant that 'new coined' money stood a good chance of filtering out of the vicinity in the purses of merchants and wayfarers, whereas in the smaller villages it was likely to linger dangerously in the pockets of local people. Once false coin was found circulating in a small neighbourhood attention was likely to be focused on a relatively small number of potential suspects: larger towns, therefore, provided better cover.⁵⁰

It is worth saying something about attitudes to coining. As a 'victimless crime' Macfarlane has argued that it enjoyed a good deal of tacit approval and even popular support.⁵¹ But attitudes were far from uniform. There were those who justified it - 'it is a better trade than hedging', one coiner is reported to have said; 'it is no sin to clip', were the words attributed to another.⁵² At the same time there is also clear evidence of antipathy towards coiners: one man, for example, was called 'a clipping, switching rogue'.⁵³ We

49. The records contain several references to such people being involved as suppliers: PRO, ASSI 45/2/1/17, 71-77, 90-91, 174, 187.

50. In the small hamlet of Goatland in the North Riding, for example, a counterfeit coin that had passed into circulation was quickly traced to its source: PRO, ASSI 45/2/1/70-77.

51. *The justice and the mare's ale*, pp. 62-63.

52. PRO, ASSI 45/3/1/183; 45/2/1/129.

53. PRO, ASSI 45/2/2/79.

do not have far to go to discover the reason for this: false coin had to be passed off to someone, and the recipient was unlikely to feel the subject of a 'victimless crime'. It is unsurprising that among the witnesses against the Yorkshire coiners were several who had been given 'new coined' money as payment for debts, goods or services.⁵⁴ Other people disliked the apparent ease with which the successful coiner made his living. A note of bitterness creeps into the testimony of the neighbours of a Bradford coiner, Paul Rawson, who observed that his activities had enabled him to build up a large estate and to be 'in good rank outwardly' despite living idly 'without any calling'.⁵⁵ The depositions of course are unlikely to contain many sympathetic references and are inevitably biased as a source for investigating popular attitudes to coiners and coining. Nevertheless, the readiness of witnesses, some of whom withstood threats and rejected bribes, to come forward and give evidence suggests that counterfeiters were treated with less tolerance than Macfarlane has argued.⁵⁶

V

At around the same time that the anti-counterfeiting campaign reached a peak the authorities were faced with

54. PRO, ASSI 45/2/1/137-38, 173, 227.

55. PRO, ASSI 45/2/1/219.

56. PRO, ASSI 45/2/1/77, 134, 138, 139.

another serious problem of crime control: horse-stealing. Like counterfeiting this was a problem exacerbated by the special conditions of the Civil War.

Horse-stealing was the most common felony to come before the courts (Table 6.5): the majority of cases went to assizes where they accounted for slightly more than a quarter of all property crimes (Table 6.4). At West Riding quarter sessions they were less common: the sixty-nine indictments form under 5% of the property crimes tried there (Table 6.3).

The level of prosecutions fluctuated from year to year, but as Tables 6.6 and 6.7 indicate, there was a particularly heavy cluster in the later 1640s. Table 6.7 shows that in the five years before the outbreak of war there were nine cases of horse-stealing tried at West Riding quarter sessions, an annual average of 1.8. In the five-year period beginning in 1647 the number of cases rose to thirty-five, an annual average of seven. Pre-war assize records are scanty, but they hint at a similar picture (Table 6.7): at the Lent 1641 assizes there were just eight indictments for horse-stealing. By the Summer 1646 sitting this total had more than doubled. At both sittings of assizes in 1647 there were forty indictments. The numbers at both quarter sessions and assizes, although still relatively high, dropped in 1648, a reflection of the much reduced level of business at the summer meetings of both courts owing to the outbreak of the Second Civil War. The following year, however, horse-stealing cases again picked up:

TABLE 6.6
Annual totals of prosecutions for selected property crimes at
West Riding quarter sessions, 1638-1665

	HORSES		SHEEP		FOOD		POULTRY		CATTLE	
	<i>inds</i>	<i>pers</i>	<i>inds</i>	<i>pers</i>	<i>inds</i>	<i>pers</i>	<i>inds</i>	<i>pers</i>	<i>inds</i>	<i>pers</i>
1638	6	8	31	38	21	35	9	13	2	3
1639	2	3	9	14	11	15	7	10	0	0
1640	1	1	7	14	5	7	1	1	2	2
1641	0	0	6	7	8	13	5	6	3	4
1642	0	0	10	14	4	6	2	3	0	0
1647	11	5	6	7	7	17	3	4	8	6
1648	2	2	10	11	6	14	1	1	2	2
1649	12	8	27	50	16	23	3	6	5	6
1650	8	9	13	18	11	14	5	6	3	4
1651	2	3	11	11	7	11	4	3	2	4
1652	2	3	10	11	7	8	0	0	3	4
1653	6	4	17	25	2	1	2	3	2	2
1654	1	1	2	5	0	0	3	3	2	2
1655	0	0	3	2	2	1	2	2	1	2
1656	4	3	5	4	5	8	0	0	1	1
1657	2	2	18	24	6	9	0	0	0	0
1658	1	1	25	30	10	18	5	6	3	4
1659	1	1	10	13	7	7	2	2	4	4
1660	2	3	7	15	4	4	2	5	2	3
1661	3	3	12	11	4	5	4	4	3	3
1662	0	0	12	13	4	7	6	8	2	2
1663	1	1	13	14	4	5	0	0	2	3
1664	0	0	7	7	4	4	4	6	3	1
1665	2	1	6	9	3	4	1	1	2	5
TOTAL	69	82	277	367	158	236	71	93	57	67

NOTES and SOURCE: As in Table 6.1.

there were fifty-two indictments (counting both courts together), the highest annual total over the whole period. Thereafter there was a marked decline, until by the mid 1650s (both courts: sixteen indictments, in 1656; thirteen indictments, in 1657) there was by comparison a substantial reduction.

Assize depositions and the papers of the indemnity committee make clear that this concentration of prosecutions in the later 1640s was largely the result of action taken against soldiers for the seizure or

TABLE 6.7
Prosecutions for selected property crimes at York assizes,
1641-1658

	HORSES		SHEEP		FOOD		POULTRY		CATTLE	
	<i>inds</i>	<i>pers</i>	<i>inds</i>	<i>pers</i>	<i>inds</i>	<i>pers</i>	<i>inds</i>	<i>pers</i>	<i>inds</i>	<i>pers</i>
L.1641	8	6	1	1	1	1	0	0	0	0
S.1646	18	16	3	5	1	1	0	0	11	10
L.1647	15	18	9	13	1	1	0	0	7	11
S.1647	25	20	5	5	1	1	0	0	8	8
L.1648	21	20	12	13	5	5	1	1	12	14
S.1648	8	7	2	2	0	0	0	0	5	4
L.1649	16	12	12	15	2	2	1	1	15	14
S.1649	24	27	13	20	2	4	0	0	8	9
L.1650	17	17	16	17	3	4	0	0	9	13
S.1650	10	11	5	5	5	5	0	0	17	12
L.1651	14	12	5	6	2	2	0	0	17	14
S.1651	15	14	3	4	0	0	0	0	10	9
L.1652	15	13	4	2	3	3	0	0	6	4
S.1655	11	7	1	1	0	0	0	0	5	3
L.1656	7	7	1	2	1	2	0	0	7	7
S.1656	5	4	2	1	0	0	0	0	6	6
L.1657	8	7	5	5	0	0	0	0	0	0
S.1657	3	3	0	0	0	0	0	0	5	5
L.1658	8	9	5	7	1	1	1	1	4	5
TOTAL	248	230	104	124	28	32	3	3	152	148

NOTES and SOURCES: As in Table 6.2.

theft of horses.⁵⁷ The indemnity papers are particularly useful in putting horse-stealing into context. The committee, established in the summer of 1647, received petitions from a variety of Parliament's supporters seeking indemnity from prosecution for actions carried out 'in the public service'. A large number of soldiers facing prosecution in connection with taking horses requested the committee's protection. It is important to note that these soldiers

57. See D. Pennington, 'The war and the people', pp. 118-19, for a general discussion of the problems of supplying the army with horses.

were facing different types of prosecution.⁵⁸ Some were criminal and were tried, like other felonies, at quarter sessions or as crown side cases at assizes; in such cases the defendant's life was at stake. These must be distinguished from civil causes tried, most of them, on writs of *nisi prius* at assizes, and which resulted, at worst, in a fine and a bill for costs.⁵⁹

The indemnity cases, whether criminal or civil, show that soldiers were extremely vulnerable to prosecution for taking horses. They show, for example, that even when they undertook orderly distrainments, with warrants from commanding officers, they were not protected from legal action. Captain Robert Bryer was prosecuted although he had a commission from Lord Ferdinando Fairfax empowering him to raise horses.⁶⁰ Captain Hugh Savile was acting on the orders of the militia committee but still found himself under threat.⁶¹ Nor was the co-operation of constables in

58. There has been some confusion about the nature of prosecutions of soldiers for taking horses during this period: Pennington, 'The war and the people', p. 119, and Ann Hughes, 'Parliamentary tyranny? Indemnity proceedings and the impact of the Civil War: A case study from Warwickshire', p. 58, imply that soldiers were being indicted for theft, that is felony. However, if the Yorkshire petitions are typical a very large number, probably a majority, of all cases coming before the committee concerned civil suits.

59. For a discussion of the difference between the crown side and *nisi prius* side of assizes: J.S. Cockburn, *A history of English assizes, 1558-1714*, chs. 6-7.

60. PRO, SP 24/37 (Bryer vs. Poole, petition of Robert Bryer, February 22, 1648).

61. PRO, SP 24/74 (Savile vs. Redmane, petition of Hugh Savile, November 29, 1653).

making the distraint any guarantee of safety. Indeed, it was not uncommon for the constable to find himself prosecuted along with the soldiers. Stephen Merebecke, a former constable of Selby, petitioned the indemnity committee seeking relief from a prosecution begun by an inhabitant of the town from whom, on the orders of a scout-master, he had taken a horse and saddle.⁶² Even when steps were taken to compensate the owner (for example, by levying a rate on the township), soldiers and constables were still liable to prosecution.⁶³

Most soldiers petitioning the committee faced civil suits. However, there were those indicted for felony who went on trial for their lives. Thomas Appleyard a trooper under Lord Fairfax, was imprisoned at York and tried at the Summer 1646 assizes for horse-stealing.⁶⁴

The best source for looking at criminal prosecutions faced by soldiers are the assize

62. PRO, SP 24/63 (Merebecke vs. Staines, petition of Stephen Merebecke, October 15, 1647); SP 24/1, f. 88. Similarly, Samuel Powell of Horsforth prosecuted Captain Robert Saunders and the local constable for a horse that had been taken for one of Saunders' troopers: SP 24/2, f. 55.
63. For example, when the Parliamentary garrison at Heptonstall sent to Keighley for supplies the constable, 'by the advice of neighbours ... did take up several provisions'. Later a complaint was made to General Lambert who ordered that the provisions be paid for by an assessment raised to the equal charge of all the town's inhabitants. This did not prevent those who had lost goods going to law: PRO, SP 24/86 (Wooler *et al* vs. Hoile *et al*, petition of Michael Wooler *et al*, May 31, 1650).
64. PRO, ASSI 47/20/6/44v; SP 24/31 (Appleyard *et al* vs. Crabtree, petitions of Thomas Appleyard and James Green, February 16, 1649; charges of Appleyard).

depositions. These identify thirty-one men who went on trial in connection with horse-stealing during the 1640s and 1650s as soldiers or recently disbanded soldiers: the majority came before the courts between 1646 and 1650. This is only 14% of those indicted for this crime but it should be emphasised that since soldiers are not consistently identified in the legal records this is probably a gross underestimate of the actual numbers.

In general, the circumstances in which soldiers indicted at assizes were alleged to have taken horses differed from those considered by the indemnity committee. Few were able to show that they had taken part in orderly distraints, or that they had had a warrant, or that the local constable had assisted them. Indeed, the cases tried at assizes often involved aggravating circumstances. In 1649, for example, it was alleged that six years previously a suspected horse-thief, who had then been a Royalist soldier, threatened to burn down the house of a Barnsley man and then threatened to pistol him if he did not hand over his horse.⁶⁵ But some of those on trial did claim to have been taking part in legitimate distraints, maintaining that they had had warrants. For Royalist soldiers, however, these were of little value: their warrants were rarely accepted by the post-war authorities as any kind of defence against a horse-stealing charge. John

65. PRO, ASSI 45/3/1/163-64.

and Thomas Tidman, for example, claimed to have been authorised to seize horses during the Second Civil War by virtue of a warrant from Sir John Digby and Sir Robert Byron, but both were arraigned for felony and subsequently condemned.⁶⁶ A large number of warrants sent out by Colonel Morris after the surprise of Pontefract Castle in 1648 are to be found among the assize records: presumably they formed part of the state's case against Morris at his trial at York assizes, and they may also have been used against some of his soldiers.⁶⁷ George Beckett, for example, a member of the Pontefract garrison in the summer of 1648, was convicted at the Lent 1649 assizes - the same court at which his commander was condemned for treason - of stealing three horses for the garrison's use.⁶⁸

Soldiers who claimed to have warrants were in the minority of those tried at assizes. The bulk simply took horses as they could find them, without any pretence at legality. Some were deserters; some had recently been disbanded and were now semi-vagrant; others were stealing horses for use in robberies.⁶⁹

66. PRO, ASSI 45/2/2/143-44; 44/2 (two indictments of John Tidman et al, Summer 1648). Similar acts of violence were reported to the county committee at the height of the outrages perpetrated by Scottish soldiers in Yorkshire: HMC, Portland MSS, vol. 1, p. 365.

67. PRO, ASSI 47/20/11.

68. PRO, ASSI 45/2/2/8; 44/3 (three indictments of George Beckett, Lent 1649); 47/20/6/751.

69. PRO, ASSI 45/3/1/104; 45/4/1/73-73; 45/5/2/1-9; 45/1/2/10-11.

There were revenge thefts: John Sparling stole horses from a Mr. Hall and one John Kearton because they had caused him to be 'put forward for a soldier'.⁷⁰

Although a precise figure cannot be put on the number of soldiers indicted for horse-stealing there is little doubt that distraints and the actions of individual soldiers accounted for a very high proportion of the reported cases. The problem reached a peak in the later 1640s. The fall in recorded cases at assizes and quarter sessions in the 1650s is matched by the virtual absence of any mention of military horse thieves after 1651.

The military presence also stimulated horse-stealing by supplying a ready market for civilian thieves. In normal times horse thieves encountered serious risks when they tried to sell the animals because most potential buyers wanted a voucher, that is some one who knew the seller and could testify to his ownership of the horse or his honesty.⁷¹ As Chapter Eight makes clear, a large number of thieves were arrested precisely because they failed to produce

70. PRO, ASSI 45/2/1/297.

71. Owners who bought horses without vouchers themselves risked being implicated in the theft. The assize records include several examples of careless buyers who ended up coming under suspicion: PRO, ASSI 45/1/4/29, 33a; 45/2/1/264-68, 295; 45/3/1/37-39, 219-22, 233-35. One man was condemned (though later reprieved) after he had bought a stolen horse: 45/2/2/150-52; 47/20/3/130; 44/3 (indictment of William Whitton, Lent 1649).

vouchers. The continual need of the army for mounts meant that thieves were able to sell horses quickly and with few, if any, pressures on them to authenticate ownership.⁷²

For most civilian thieves the motivation behind what was a highly hazardous enterprise was the prospect of substantial profit. Horse values varied from a few shillings to £20 or £30 or more, but an average sum was somewhere in the region of between £5 and £10. If the actual selling was fraught with dangers then at least the theft could be carried out with relative ease. Some horses were stabled, but most were pastured in unguarded closes or common fields. If they were stolen at night - this was the preferred time - the culprit could probably count on several hours elapsing before the theft would be discovered, enough time to get to one of the county's numerous market towns, sell the animal and melt into the crowd, cash in hand.⁷³ Horse fairs and markets were, however, carefully supervised; some had their entrances guarded by market officials, and toll books recorded in minute detail descriptions of animals as well as the names, residences and

72. For example, PRO, ASSI 45/3/2/126-28.

73. See *The agrarian history of England and Wales*, vol. 4, ed. Thirsk, pp. 468-69, for Yorkshire's market towns. The depositions contain numerous references to stolen horses being sold at fairs and markets: PRO, ASSI 45/1/4/29; 45/3/2/107; 45/4/1/124, 192.

occupations of sellers and buyers."⁷⁴ Some thieves minimised the risks of a public sale by trying to exchange or sell the horse, usually for a relatively low price, to a stranger on the road."⁷⁵ Others found private buyers who were willing to forgo vouchers, and presumably disquieting questions, like the vicar of Ingleton in Craven who (significantly, it was 1648) paid 30s in clipped money."⁷⁶

Judging from the depositions, most civilian thefts fall into this pattern. However, there were exceptions: servants were sometimes prosecuted by their masters for stealing horses."⁷⁷ Travellers who took horses were also prosecuted. They sometimes excused their actions by saying that they had intended only to borrow the animal to ease their journey."⁷⁸ Such excuses were not always regarded favourably by the courts."⁷⁹ There were also juvenile 'joy-riders', like eleven-year-old William Martindale who rode a neighbour's horse for about a

74. *The agrarian history of England and Wales*, vol. 4, ed. Thirsk, p. 535.

75. For example, PRO, ASSI 45/1/4/18; 45/3/1/69.

76. PRO, ASSI 45/2/2/43.

77. PRO, ASSI 45/1/5/56; 45/5/2/49.

78. PRO, ASSI 45/4/1/14; 45/5/2/16.

79. For example, James Thorpe, who claimed to have taken a horse only because he had been drinking and was tired, but was nevertheless convicted and condemned: PRO, ASSI 45/2/1/254; 44/2 (Lent 1648).

mile and a half before being arrested by soldiers."⁸⁰

However, such cases are a minority. Horse-stealing was considered an extremely serious offence by the seventeenth-century authorities.⁸¹ The impression from the Yorkshire records is that it was viewed with even more gravity during the 1640s when the unsettled conditions made this valuable animal both more vulnerable to theft and easier for thieves to sell.

VI

Recorded thefts of another valuable type of livestock, cattle, seem to have been relatively unaffected by the Civil War conditions. There are a number of cases in the indemnity papers and assize depositions of soldiers charged with taking cattle. That of Lord Ferdinando Fairfax's purveyor general, William Bell, is among them. During the first siege of Pontefract he gathered miscellaneous supplies, including cattle, for which he was later sued.⁸² John Clarke, a soldier in Colonel Monk's regiment, was arrested for stealing two oxen

80. PRO, ASSI 45/2/1/178.

81. See C. Herrup, 'Law and morality in seventeenth-century England', esp. pp. 114-15, for attitudes to horse-stealing.

82. PRO, SP 24/34 (Bell vs. Cowper, petition of William Bell, June 22, 1649). Likewise, Major Joshua Greathead, commissary for the Bradford garrison in 1644 was sued for four cattle taken, he maintained, for the garrison's use: SP 24/50 (Sutcliff vs. Greathead, petition of Joshua Greathead, December 21, 1647). Cf. SP 24/34 (Bower vs. Belwood, petition of Jeremy Bower, April 21, 1648).

which he tried to sell at Rotherham market."⁸³ But references to military offenders, especially in the criminal records, are few and far between despite the complaints about the plunder of cattle by marching armies during the Civil War."⁸⁴

The absence of a clear chronological pattern in Table 6.7 adds to the impression that soldiers were not often involved in this particular offence. The figures do not show any significant concentration of prosecutions at assizes (there are too few cases in the West Riding quarter sessions archives on which to base any kind of statistical analysis) in the later 1640s, the peak period of post-war military unrest. The average number of offences tried at assizes between 1646 and 1649 is only slightly higher than in the mid 1650s; and, in contrast to horse-stealing which had a definite and pronounced military connection, the level of 1646-1649 was lower than in 1650-1651, by which time the worst of the military lawlessness had passed. Cattle-stealing, at least on the basis of the court archives, was a predominantly civilian offence.

Cattle, like horses, were usually stolen by men (there were very few women tried for this offence)

83. PRO, ASSI 45/5/2/25-27.

84. Zachary Grey, *Examination of the third volume of Neal's history of the puritans*, pp. 43-44; PRO, SP 24/80 (Thornton vs. Oates, petition of Robert Thornton, July 20, 1649); ASSI 45/3/1/118.

whose aim was to sell the animal as quickly as possible. Thieves, normally acting alone or in pairs, often took several cows or oxen at a time; it was as easy to drive half a dozen as it was to drive one, and since the average healthy beast was worth between £3 and £6 stealing in bulk added to the enterprise's financial attractions."⁸⁵

The aim was to get to a nearby market."⁸⁶ Cattle markets were not so strictly regulated as those for horses, but they could still be hazardous: vouchers were sometimes required and details of sales entered into toll books."⁸⁷ Moreover, the local cattle market was likely to be the first place the owner would look. Richard Whencop of Hunsingore deposed that after his two draught oxen, worth over £12, had been stolen he immediately made 'diligent search and enquiry in several markets and fairs'.⁸⁸

This made private sales preferable, and cattle thieves seem to have enjoyed some success in off-loading their goods to passing strangers on the road."⁸⁹ Butchers and other tradesmen with an interest in animal

85. One Yorkshire farmer put the relative value of his livestock this way: 'Vee account two beastes [that is cattle] equall to one horse, and 5 sheep to a beast': *The farming and memorandum books of Henry Best of Elmswell, 1642*, ed. Donald Woodward, p. 80.

86. For the sale of stolen cattle in markets and fairs: PRO, ASSI 45/1/4/65; 45/4/3/47; 45/5/1/89; 45/5/4/5; 45/5/5/64; 45/6/1/100.

87. PRO, ASSI 45/4/1/180; 45/3/2/47, 158.

88. PRO, ASSI 45/6/1/145.

89. For example, PRO, ASSI 45/3/2/71.

products, skimmers, tanners and cordwainers, also offered thieves a relatively safe way of getting rid of their merchandise. Once the animal was slaughtered, the meat and the hide, with the marks removed, sold, the possibility of detection became quite remote.⁹⁰

The major drawback from the cattle thief's point of view was the animal's lumbering pace which allowed owners quick off the mark time to mount a successful pursuit. To the more calculating thief cattle-stealing on balance held few attractions. With the exception of large-scale cattle-rustling, for which there is no evidence in the assize records of this period, the theft of cattle was the work of opportunists whose planning consisted of little more than crossing their fingers in the hope of finding a buyer. Doubtless it was because of this, the essentially amateur nature of the offence and the relatively high chances of recovery, that the theft of cattle was not viewed in the same light as horse-stealing. To men in the seventeenth century it was more akin to the 'petty' crime of sheep-stealing.⁹¹

VII

The demands of Yorkshire's textile industry and thriving wool markets meant that the county supported a

90. PRO, ASSI 45/1/5/78; 45/3/2/47, 144, 112; 45/4/1/15; 45/5/2/68; 45/5/6/81-83.

91. S.J. Watts, *From border to middle shire: Northumberland, 1586-1625*, p. 179.

huge sheep population, and sheep-stealing was one of the most commonly recorded crimes during this period (Table 6.5). At quarter sessions it accounted for almost 18% of all property offences and at assizes 11%.

The men and women (the latter accounted for a fifth of known offenders: Tables 6.8 and 6.9) indicted for sheep-stealing had a variety of motives: some stole large flocks in order to sell them, like horses and cattle, at markets and fairs or to butchers. Butchers, along with tanners and skinners, were themselves indicted for this offence. A Pontefract butcher, William Capes was accused of stealing about twenty sheep, the property of Sir Thomas Wentworth of Elmsall, which he and four accomplices slaughtered and then sold the skins and meat.⁹² Assize and quarter sessions indictments suggest that approximately 6% of the men indicted for sheep-stealing were butchers (Table 6.8), although it must at once be conceded that the indictments do not provide an entirely reliable guide to the occupational status of offenders, and there are too few 'additions' given in the depositions against which to compare this data.⁹³

Sheep were much less valuable than horses or cattle: the average during this period was between

92. PRO, ASSI 45/1/5/26-28.

93. The additions of only twenty-one male sheep thieves are given in the depositions covering the period 1640-1662. For what they are worth these were: eleven labourers, five artisans/tradesmen, four butchers and one husbandman: PRO, ASSI 45/1/2-45/6/2.

TABLE 6.8
'Additions' of men charged with sheep stealing at quarter sessions
and assizes, 1638-1665

	QUARTER SESSIONS		ASSIZES		TOTAL	
	n.	%	n.	%	n.	%
Labourer	287	81.8	102	91.1	389	84.0
Butcher	26	7.4	0		26	5.6
Husbandman	12	3.4	0		12	2.6
Collier	5	1.4	0		5	1.1
Clothier	4	1.1	0		4	0.9
Skinner	2	0.6	1	0.9	3	0.6
Clerk	2		0		2	0.4
Tailor	2		0		2	
Joiner	2		0		2	
Yeoman	1	0.3	4	3.6	5	1.1
Weaver	1		2	1.8	3	0.6
Dyer	1		1	0.9	2	0.4
Nailer	1		1		2	
Smith	1		1		2	
Fellmonger	1		0		1	0.2
Valler	1		0		1	
Mason	1		0		1	
Tanner	1		0		1	
TOTAL	351	100.2	112	100.1	463	99.7

- NOTES:
1. Figures refer to 'additions' rather than persons.
 2. Assize figures include all surviving indictments. Names taken from the gaol calendars do not normally carry 'additions'. The status of a large proportion of men indicted at assizes could not therefore be established.

SOURCES: PRO, ASSI 44/1-8, 19; WYRO, QS 4/1-8.

TABLE 6.9
Women charged with sheep stealing at quarter sessions and assizes,
1638-1665

	QUARTER SESSIONS		ASSIZES		TOTAL	
	n.	%	n.	%	n.	%
Married	38	48.1	6	60.0	44	47.3
Spinster	36	45.6	4	40.0	40	43.0
Widow	5	6.3	4	40.0	9	9.7
TOTAL	79	100.0	14	100.0	93	100.0

NOTES and SOURCES: As in Table 6.8

3s 4d and 7s.⁹⁴ Unless they were stolen in large numbers there was little prospect of a significant financial gain for the thief. But this was not the usual motive behind the offence. Most involved only one or two animals which suggests that they were being stolen in order to be eaten rather than sold. The great majority of offenders, as Table 6.8 suggests, were drawn from the labouring population: between 80% and 90% of male offenders. The question therefore arises whether the poor were taking sheep out of necessity. Was there a connection between economic conditions and sheep-stealing? This makes the pattern of prosecution important.

Tables 6.6 and 6.7 show that there was a concentration of prosecutions for sheep-stealing in the later 1640s. At assizes eighty men and women were arraigned for sheep-stealing at nine sittings of the court between 1646 and 1650, with the peak in 1649 when thirty-five were indicted. Over the next nine sittings for which records are complete (see Table 6.7) twenty-eight persons were indicted, a fall of three-quarters. At quarter sessions the highest annual total of indictments was in 1638, but if we count persons - a more reliable index - the highest was in 1649 when fifty men and women were indicted (Table 6.6). The following year eighteen were indicted, eleven in the year after that. By the middle 1650s the number of

94. *The farming and memorandum books of Henry Best*, ed. Woodward, pp. 11-12.

people charged with sheep-stealing at quarter sessions fell to a fraction of the former levels: five in 1654, two in 1655, four in 1656. The volume of cases rose in the later 1650s, reaching thirty in 1658, but did not recover its earlier dimensions.

The year 1649 was the worst year of the post-war dearth, a time of widespread distress, high food prices, shortages and severe weather.⁹⁵ Conditions eased during the mid 1650s before worsening again later in the decade. To this extent the pattern of prosecution roughly corresponds to the changing economic circumstances, and the depositions of men examined in connection with sheep-stealing during the dearth strongly suggest that destitution was a common motive. There are difficulties about using depositions as a pointer to the accused's motive since most of those examined denied having anything to do with the theft, and those who confessed (a fraction of the total) may have been attempting to obtain favourable treatment by pleading desperation. These reservations must be kept in mind when reviewing the examinations of men like John Whitticars of Clayton who, apprehended in January 1650, told the investigating magistrate that he intended to take the animal home 'for relief of himself and his family'. Likewise Peter Barber explained that he had stolen a sheep 'for want, he having a wife, and two children ... and not able to relieve them by his work'. Henry Gillin stole a sheep, he said, 'for mere

95. Above, pp. 131-36.

necessity, having nothing to maintain his wife and four children withall, and loath to make known his wants in the town'. Joseph Tompson also referred to his 'necessity' when confessing, as did George Greenbancke." The depositions in all these cases indicate that the animals had indeed been slaughtered for consumption rather than sold. It is noteworthy that comments of this kind do not appear in the examinations of offenders dating from the mid 1650s by which time economic conditions had improved.

We find the same motive - necessity - spelt out in the examinations of those charged with stealing food. Ann Sumpster, the wife of a Spofforth labourer, confessed to stealing a bushel of corn in June 1649 'she being much necessitated and wanting food for herself and children'. John Myddlebrooke, who confessed in December the following year that he had stolen butter and cheese from a local gentleman's buttery, claimed to have been 'in great necessity, ready to perish for want of food'." Most of those tried for stealing food went to quarter sessions where they constituted 11% of all property offenders, the third largest category. Table 6.6 again shows a significant concentration of offenders indicted at quarter sessions in the later 1640s: more than a quarter of those arraigned for stealing food were tried between 1647 and

96. PRO, ASSI 45/2/2/147; 45/3/1/10-11, 73; 45/3/2/64, 172.

97. PRO, ASSI 45/3/1/195; 45/3/2/105-6.

1650, with the peak again occurring in 1649. (At assizes only thirty-two people were indicted for this offence, precluding any kind of meaningful analysis.) The theft of poultry, which had little value to a thief except as food, was rarely prosecuted: at assizes there are just three cases; at quarter sessions ninety-three men and women were indicted. Although normally stolen for food the figures show no particular concentration of indictments during the dearth. This may well be explained by the fact that poultry were of relatively little value. A cock or hen was worth less than a shilling, and since a prosecution could entail costs ten or twenty times that sum (see Chapter Eight) victims must frequently have pondered the wisdom of taking offenders to court. Fluctuating prosecution levels for this particular offence, therefore, may have been unaffected by the changing economic climate, and instead may reflect no more than the choices exercised by the handful of victims who, for whatever reasons, decided to go to court.

It is impossible to prove a conclusive causal connection between property crime and economic conditions.⁹⁸ The data is insufficiently precise: the

98. The existence of such a connection is a matter of debate: P. Lawson, 'Property crime and hard times in England, 1559-1624', argues strongly for it; J. Innes and J. Styles, 'The crime wave: Recent writing on crime and criminal justice in eighteenth-century England', are sceptical. Cf. R. Wells, 'Sheep-rustling in Yorkshire in the age of the industrial and agricultural revolutions', esp. p. 133, and Beattie, *Crime and the courts in England*, pp. 170-71, on connections between poverty and sheep-stealing in the eighteenth century.

prosecution samples are relatively small, and the price indices do not necessarily reflect the fluctuating economic position of the poor which was dependent on an array of factors, not just the price of wheat. However, the confessions of the hunger-stricken men and women who took sheep or handfuls of grain, even if they do no more than add to the impressionistic evidence about the relationship between dearth and theft, at least provide corroboration for what sixteenth- and seventeenth-century letter writers and diarists like James Ryther and Oliver Heywood took for granted: that the starving preferred to steal than perish."

VIII

Prosecutions alleging, variously, the theft of household goods (clothes, linen, pewterware, jewellery, books and so forth), money, cloth and tools, differed in frequency (Table 6.5) but had common factors. With few exceptions they were essentially small-scale, amateur and opportunistic. This point requires no labouring; the assize depositions are replete with suspects and prosecutors who testify to it. Mathew

99. In 1587 Ryther wrote to Burghley: 'The poore people of thes partes ar growen, and yet do growe, to great and perillus numbers, and now that charyty waxeth colder ... in trewth they fall to stealinge and to other unlawfull acctions hardly to be repressid for their generallyty': W.J. Craig, 'James Ryther of Harewood and his letters to William Cecil, Lord Burghley', part 2, p. 134. A century later Oliver Heywood recorded 'Theres great poverty by decay of trade, multitudes come a begging: theres also much stealing': *Diaries*, vol. 2, p. 286.

Blyth, for example, left linen sheets to dry on a hedge; they were taken by two vagrant women who happened to pass by.¹⁰⁰ Anne Dixon, a twenty-year-old servant of a Pontefract baker, stumbled upon her master's money in a 'drinking can', took it on the spur of the moment and fled. When examined she was unable even to say how much she had stolen.¹⁰¹ Anne Spurr, who was charged with stealing £100, turned out to have happened upon the money hidden in the dovecote of a mill as she was trying to catch an owl that had spoilt some of her husband's clothes.¹⁰²

Few suspects had any idea about covering their tracks. The two vagrant women who stole Mathew Blyth's linen simply continued down the road. Their attempt to avoid apprehension amounted to no more than hiding in a hedge at the approach of a pursuer. Anne Dixon, like most servants who pilfered from their masters, had nowhere to go but home, where she was arrested without difficulty.

Most offenders tried to sell or pawn the things they stole; but few got much for their labours. The sums that passed between them and receivers rarely amounted to more than a few pennies. Edward Mattyson got 9d when he pawned cloth worth 6s 8d.¹⁰³ Roger Kirby

100. PRO, ASSI 45/5/2/70-71.

101. PRO, ASSI 45/2/2/28-29.

102. PRO, ASSI 44/4 (indictments, Summer 1651; depositions of Brian Wylde *et al*, January 21-28, 1651).

103. PRO, ASSI 45/5/1/123; 44/5 (indictment of Edward Mattyson, Lent 1654).

reversed the normal priorities by exchanging the 36s he had pilfered from his master for a ribbon for his hat.¹⁰⁴ Nor was he the only one who seemed unable to appreciate the value of what he had taken: other servants, some of them presumably children, regularly gave away the valuables they had filched for little or next to nothing.¹⁰⁵

Some men and women regularly received stolen property and encouraged their suppliers to commit further thefts. Mathew Hepper alleged that on several occasions he sold Robert Robinson of Thurgoland clothes, sheets, wool and wheat, and that Robinson had enticed him into committing the thefts.¹⁰⁶ But despite the fairly large number of references to people (among them the ubiquitous alehousekeeper) buying stolen property, there was no Dickensian underworld of receivers.¹⁰⁷ The fencing of stolen property was haphazard and very small scale.

Of course, not all thefts were committed by opportunists. Some larcenies were carried out by men and women who had very definite ends in view. There were shoplifters, some of whom were apparently habitual

104. PRO, ASSI 45/5/3/37-38.

105. For example, Elizabeth Bartin who handed over the gold pieces she took at various times from her mistress to Elizabeth Huitt without receiving anything in return: PRO, ASSI 45/5/1/4-5.

106. PRO, ASSI 45/3/1/91.

107. For alehousekeepers receiving stolen goods: PRO, ASSI 45/2/1/89c. Stolen goods were also pawned at alehouses: Peter Clark, *The English alehouse: A social history, 1200-1830*, pp. 86, 137, 139, 229, 317-18.

and reasonably skilled thieves.¹⁰⁸ There were specialists who pilfered from stalls at markets and fairs.¹⁰⁹ Others rifled the packs of carriers and occasionally got away with rich pickings.¹¹⁰ On the whole, however, the abiding impression from the depositions is not of hardened and ruthless criminals but of pathetic men and women whose criminal activities are rarely distinctive for anything other than their incompetence.

IX

Offences and offenders against the game laws were quite different from other property crimes. Poachers were often of higher social status than the run-of-the-mill property offender (Table 6.10); and poaching was a misdemeanour punishable by fining or in some cases by imprisonment.¹¹¹ Moreover, it was often surrounded by political controversy: while landowners insisted on defending the game laws as integral to the rights of property, those barred from taking game condemned them as iniquitous and oppressive. Both the incidence of poaching and the rhetoric the game laws generated intensified during the Civil War. In 1640 the king's

108. PRO, ASSI 45/5/3/60, 144.

109. PRO, ASSI 45/5/2/74; 45/5/3/136; 45/6/1/174-75.

110. PRO, ASSI 45/2/1/106-11c; 45/5/1/69-71, 110.

111. See P.B. Munsche, *Gentlemen and poachers: The English game laws, 1671-1831*, ch. 1 and Appendix, for a summary of the game laws and their provisions.

TABLE 6.10
Additions of men charged with poaching taken from West Riding
quarter sessions indictments, 1638-1665

	n.	%
Clerk	2	0.7
Gentry	12	4.5
Yeoman	70	26.3
Husbandman	61	22.9
Tradesman/artisan	53	19.9
Labourer	68	25.6
TOTAL	266	99.9

- NOTES:
1. The figures refer to 'additions' rather than persons. The number of 'additions' is higher than the number of persons in Table 6.2 because the same person was often indicted at the same sessions for more than one offence, and the 'addition' has been counted once for each offence.
 2. 40 'additions' were not given.
 3. Three cases of poaching were found among the King's Bench ancient indictments. A total of seven accused were involved: three were yeoman, two gentleman and one labourer. There are four indictments for poaching among the assize records, but the patchy survival of misdemeanour files means that this must be a serious underestimate of the actual number of cases heard. Eight men were arraigned at assizes for poaching, all of them described as labourers.

SOURCE: WYRO, QS 4/1-8.

deer, as Brian Manning has pointed out, were 'the first to come under attack'; royal forests, chases and parks were raided; gamekeepers attacked. Warrants for the arrest of ringleaders were ignored; those who were apprehended were rescued by accomplices. The attacks spread; unpopular landlords in Essex, Suffolk, Surrey, Gloucestershire and elsewhere, had their parks broken into and their deer carried off."¹²

112. *The English people and the English Revolution*, pp. 205-11. After the Restoration a Royalist gentleman recalled how 'Since the beginning of the late Unhappy Rebellion' game had

In Yorkshire there was long-standing resentment of the game laws. In the sixteenth century the commonest motivation behind enclosure in the county had not been to improve the soil, but to improve the chase.¹¹³ Understandably, this bred hard feelings at a time of sharp population growth and pressure on the land market. The laws were vigorously enforced. In the years just prior to the Civil War prosecutions for poaching in the West Riding were numerous. Between 1638 and 1642 114 persons were indicted at quarter sessions (as misdemeanours most poaching cases went to quarter sessions, although there were occasional prosecutions at assizes).¹¹⁴ The quantity of prosecutions varied from place to place. Table 6.11 shows that in the unproductive moorland and bogs of the north-western corner of the Riding (the wapentakes of Ewcross and Staincliffe), where there were few resident gentry, prosecutions for poaching were virtually unknown. The middle district (the southern part of Skyrack, Morley and Barkston Ash), another area mostly comprised of barren moorland, also saw comparatively few

(n, 112 cont.)

been 'Excessively & outrageously Spoyled & destroyed by base p[er]sons of Mean & Lowe condition': cited in Munsche, *Gentlemen and poachers*, p. 15.

113. I.S. Leadam, 'The inquisition of 1517: Inclosures and evictions', p. 219, shows that in the West Riding at the beginning of the sixteenth century enclosures for the purposes of the chase accounted for 77% of the whole area enclosed, some 1,812 acres. For opposition to enclosure in Yorkshire see above, pp. 28-29.
114. Game offences were being prosecuted vigorously in the late sixteenth century: J. Lister, *West Riding sessions rolls, 1598-1602*, p. xliii.

TABLE 6.11
Indictments for poaching in the West Riding by wapentake,
1638-1665

VAPENTAKE	n.	%
Strafforth-Tickhill	33	24.4
Agbrigg	23	17.0
Claro	22	16.3
Staincross	22	16.3
Barkston Ash	11	8.1
Morley	9	6.7
Osgoldcross	6	4.4
Skyrack	5	3.7
Staincliffe	4	3.0
Ewcross	0	0
TOTAL	135	99.9

- NOTES:
1. The place of offence given in four indictments could not be placed in a wapentake.
 2. Two of the three cases in the King's Bench records (see Table 6.10, n. 3) took place in Strafforth-Tickhill wapentake and the third in Staincross. Three of the assize cases occurred in Agbrigg wapentake, and the fourth in Strafforth-Tickhill.

SOURCES: WYRO, QS 4/1-8.

prosecutions. It was in the southern wapentakes of Strafforth-Tickhill, Staincross and also in Agbrigg that the bulk of poaching prosecutions originated. These were the more fertile districts. The undulating, wooded countryside supported numerous gentry estates and, as Christopher Saxton's sixteenth-century map shows, it was dotted with enclosed parks and chases.

The nature of prosecutions also varied from place to place. In the more barren districts the occasional indictments were for shooting pigeons, coursing hares and rabbits, fishing and going equipped with dogs, nets, guns and other 'engines'. The isolated forests and parks in these districts, such as that at Knaresborough belonging to the queen, the Earl of

Cumberland's park at Girswood, and the free park of Richard Neile, archbishop of York, at Sherburn were all raided for deer from time to time (this accounts for the bulk of the prosecutions originating in Claro wapentake)."¹¹⁵

However, it was in the southern wapentakes that deer-stealing, the most serious of poaching offences, was most common: prosecutions were brought against men for taking deer from Sir Francis Fane's park at Aston, Sir William Savile's parks at Bradfield and Brearley, and Sir Francis Wortley's park at Wortley."¹¹⁶ Pheasants were also taken from Sir Arthur Ingram's properties in the Level of Hatfield Chase, and, to the north, rabbits were poached from the warrens of Viscount Savile at Lindle Hall near Wakefield."¹¹⁷

After the Civil War prosecutions declined sharply. Almost half of the 235 poachers tried at quarter sessions between 1638 and 1665 were indicted before the War. This does not indicate less poaching; rather, it suggests a lack of confidence on the part of the Royalist gentry to undertake prosecutions. Chapters

115. WYRO, QS 4/1 (indictments of Richard Widdopp, Summer 1638, Skipton sessions; William Smythson, Summer 1641, Skipton sessions; Richard Broadbelt *et al*, Epiphany 1642, Wetherby sessions; Edward Bewley, Easter 1639, Pontefract sessions).
116. WYRO, QS 4/1 (indictments of Henry Barnshawe *et al*, Epiphany 1638, Barnsley sessions; William Rogers *et al*, Michaelmas 1638, Doncaster sessions; John Crosley, Easter 1640, Pontefract sessions; John Towler *et al*, Michaelmas 1641, Wakefield sessions; Gilbert Smalesfeild *et al* Summer 1638, Rotherham sessions).
117. WYRO, QS 4/1 (indictments of Richard Walker *et al*, Michaelmas 1641, Wakefield sessions; William Hall, Easter 1640, Pontefract sessions).

Three and Four discussed the social and political tensions between the middling sort who had supported Parliament and the Royalist gentry as they emerged in the later 1640s and 1650s.¹¹⁸ The game laws became part of that tension. Poachers more than ever felt justified in hunting, condemning the game laws and manorialism, another source of social tension, in the same breath as the tainted heritage of the Norman conquest.¹¹⁹ Meanwhile, Royalist landlords were more than ever powerless to take action. It was only in the later 1650s, in the increasingly conservative political climate, that the gentry felt confident enough to seek enforcement. An index of this comes from the activities of the Earl of Arundel's gamekeepers. After being quiet for almost a decade they prosecuted four local men in 1649 for hunting the earl's deer. There is no recorded outcome in the case, and it is possible that the prosecution collapsed. If so, it may have discouraged further prosecutorial activity. In any event, the earl's gamekeepers relapsed into quiescence until 1656. Then they recovered the initiative. Over the following four years they brought charges at quarter sessions, assizes and King's Bench against more than a dozen poachers, some of whom they succeeded in having imprisoned.¹²⁰ The tide had turned against the poachers

118. Above, esp. pp. 93-94, 108-9, 119-21, 154-57.

119. Above, p. 121.

120. VYRO, QS 4/2, f. 107v; 4/4, f. 109v; 4/5, ff. 124, 166-66v; PRO, KB 9/846, m. 149; ASSI 44/6 (indictment of John Stones *et al*, Summer 1656).

and the Restoration brought a firm restatement of the principle of property as far as hunting was concerned. The game laws were consolidated and the poachers lost the advantage they had gained from the disruption of social and legal relations in the aftermath of the Civil War.¹²¹

X

To the extent that we can trust the legal records, they suggest that the great majority of property offenders - poachers apart - were drawn from the poorest sections of the community. Table 6.12, based on additions taken from assize depositions - the most reliable of the legal records - shows that of 225 male suspects examined by magistrates between 1640 and 1662 and whose occupations were noted, less than 10% were yeomen or above; about 40% were labourers; another 7% servants; 7% husbandmen; and slightly more than a third were artisans or tradesmen. This last, rather nebulous, category needs closer attention. The majority of offenders coming within it, as far as it is possible to tell from the depositions, were not rich producers or manufacturers. A number were servants or apprentices. Nicholas Cadman, for example, was described as a twenty-four-year-old cordwainer, but the depositions show that he was the servant of a Pontefract artisan

121. Munsche, *Gentlemen and poachers*, pp. 15-19.

TABLE 6.12
'Additions' of property offenders taken from assize depositions,
1640-1661

	n.	%
Gentry	3	1.3
Clerk	1	0.4
Yeoman	15	6.7
Husbandman	16	7.1
Labourer	89	39.6
Servant	15	6.7
Artisan/Tradesman	80	35.5
Other	6	2.7
TOTAL	225	100.0

- NOTE:
1. The *Other* category consists of two watermen, one keelman, one boatman, one tinker, and one collier.
 2. Soldiers have not been included as a separate category. They are usually referred to in the depositions by their occupation.

SOURCE: PRO, ASSI 45/1/2-45/6/1.

and was being examined in connection with stealing a sum of money from his master.¹²² Others followed the poorest domestic crafts - shoemaking, weaving, gloving, and tailoring.¹²³ Some were alehousekeepers, a group which the seventeenth-century authorities regarded as being drawn preponderantly from the poor (a view confirmed by the researches of Peter Clark).¹²⁴ A number

122. PRO, ASSI 45/2/1/40-41; 44/2 (Lent 1647).

123. For the status of domestic craftsmen: C.G.A. Clay, *Economic expansion and social change: England 1500-1700*, vol. 2, pp. 9, 27; *The agrarian history of England and Wales*, vol. 4, ed. Thirsk, pp. 760-61. Twenty-six of the eighty artisans and tradesmen were tailors, glovers, shoemakers or weavers. An indication, though admittedly based on a very small sample, of the social status of the tradesmen and artisans in Table 6.12 comes from the number who were unable to sign their depositions - fourteen out of eighteen (the remainder put neither sign nor mark).

124. *The English alehouse*, pp. 73-80, 202. For alehousekeepers as suspects in property offences: PRO, ASSI 45/2/1/148; 45/1/4/53.

of 'tradesmen' were in reality vagrants, like the petty chapman from Hett in Durham who told the investigating magistrate that he had slept in four different North Riding towns in as many nights.¹²⁵ John Hartley, another petty chapman, was also vagrant. During his examination he confessed that, besides being a former inmate of the house of correction at Richmond, he 'hath for the most part' of the previous four years 'travelled up and down the country with Scotch cloth and Holland cloth ... upon his back to sell, except in harvest time, and then he useth to work at harvest work'.¹²⁶ There are, among the depositions, numerous confessions to indicate that vagrants like Hartley featured prominently as property crime suspects; they come from men like Robert Ireland who told the justice of the peace that he made his living by selling tobacco in winter and by fishing in summer; or Nicholas Watson who stated that 'he hath not these many years any settled place of habitation, but by his calling is a seller of linen cloth'.¹²⁷

There were, of course, some offenders from better off groups: counterfeiterers have already been mentioned. However, such men were not only comparatively rare, their law-breaking was often distinct from that of the poor. Michael Keighley, described as a gentleman, was examined before the lord mayor of Doncaster in 1655

125 PRO, ASSI 45/1/3/39-40.

126. PRO, ASSI 45/4/3/52.

127. PRO, ASSI 45/4/1/123, 180.

after he had been accused of stealing three horses. The depositions reveal that the case was not a straightforward one of theft. Keighley had distrained the horses on the orders of the commissioners for the sewers for arrears in respect of improved land at Epworth in Lincolnshire. The animals were brought to Doncaster, apprized, and notice of a public sale given by the crier.¹²⁸ The special conditions of the Civil War years also affected the social profile of offenders. Army officers indicted for horse-stealing were often drawn from the ranks of the middling sort, which boosts the size of the well-to-do contingent, but rather distorts the picture as far as it concerns ordinary property offenders. George Agarde, for example, a disbanded soldier questioned about the theft of several horses, claimed that his father was a gentleman and that his brother had 'a good estate' and was clerk to the county committee of Stafford.¹²⁹

The literacy levels of property offenders as they appear from the depositions reinforces the impression that they were preponderantly drawn from the labouring poor. Not all suspects signed their depositions

128. PRO, ASSI 45/5/2/56. Another gentleman examined in connection with horse-stealing turned out not to be the thief: Thomas Booth of Deansbiggin came by the stolen animal when he exchanged horses with John William who, when questioned, admitted having stolen it: ASSI 45/4/3/102.

129. PRO, ASSI 45/5/2/1. Henry Agard, the clerk of the committee at Stafford, was, according to D. Pennington and I. Roots, 'a member of a younger branch of a family which had recently produced a High Sheriff and which held lands all over the County': *The committee at Stafford, 1643-1645*, p. xxv.

TABLE 6.13
Accused in property crime in Halifax parish, 1654-1670, compared
with the 1664 hearth tax returns

<i>Social group</i>	<i>n.</i>	<i>%</i>	<i>% of group in parish</i>
'A'	0	0	2.6
'B'	2	8.7	14.8
'C'	4	17.4	16.4
'D'	6	26.1	31.9
'E'	11	47.8	34.3
Total	23	100.0	100.0

- NOTES: 1. See Table 3.4 (p. 65) for an explanation of the social groups used here.
2. The names of forty men and women who appeared as accused at York assizes and West Riding quarter sessions could not be positively matched against those contained in the hearth tax lists.
3. The names of a further nine accused were discounted because they were described as resident outside the parish.

SOURCES: PRO, E.179/210/393; ASSI 44/5-8, 19; WYRO, QS 4/4-9.

(practice varied with the magistrate and some suspects refused to sign). Of those who did (159 male suspects examined between 1640 and 1662), 119 put marks and forty signed their names in full: an illiteracy rate of 74.8%.¹³⁰ This, as Chapter Seven shows, stands in stark contrast to the literacy levels among prosecutors.¹³¹

Further confirmation of the low status of property offenders comes from a study of men and women indicted for property crimes originating in Halifax parish (Table 6.13). Offenders tried at quarter sessions and assizes between 1654 and 1670 were matched against the 1664 hearth tax returns. In respect of forty men and

130. Of the twenty-six female suspects who signed their depositions none was able to put their names in full.

131. Below, pp. 298-99.

women it proved impossible to make an unambiguous correlation, possibly because of the tendency to describe offenders as resident in the parish where the offence was committed, possibly because some of those resident in the parish died or moved on before the hearth tax returns were made. It is also possible that they lived in some of the parish's many crowded tenements and would not necessarily have shown up on the tax returns. We are left with twenty-three offenders who can be matched against the tax returns. Of these two-thirds belonged to the two lowest social groups - 'E' and 'D' - the destitute, labourers, cottagers and struggling craftsmen. None belonged to the élite group 'A' and only two to the slightly less wealthy 'B'. The other four were drawn from group 'C' - the kind of small domestic craftsmen and tradesmen we find in Table 6.12.

Although the sample is very small, what it suggests about the social status of offenders chimes well with the conclusions derived from the occupational background and literacy levels indicated by the assize depositions. The sources may not be complete, or perfect, but they all point in the same direction. Property offenders, with few exceptions, were the poorest members of the community.

And with few exceptions any success they enjoyed in their illegal enterprises owed more to luck than planning. Some offenders did take steps to minimise the risks. In particular, those involved in more

complicated crimes, coiners, highwaymen, pickpockets, cutpurses and horse thieves, had to do some planning. If the concept of a 'criminal class' holds any validity at all, it applies to these offenders - men and women who calculated the dangers and actively sought fresh opportunities to profit from crime. In this the upheavals of the Civil War and its aftermath gave them greater scope, and the higher rates of prosecution for serious offences during the later 1640s and early 1650s probably reflects a higher incidence of crime in the community.

Some of these serious offenders were 'recidivists'. The ambiguous nature of the court archives does not allow a precise figure to be put on their number but, at a rough guess, it was probably somewhere in the region of between 5% and 10%. These were the kind of men and women who attracted comment from magistrates and judges. In Edward Hext's words they were 'most wycked and desperate persons', 'lewde yonge men', and 'wanderinge Idell people' who would 'rather hazard ther lyves then work'.¹³² To Hext they were divorced from the God-fearing and law-abiding: the offender and the non-offender inhabited wholly separate spheres. His was an entirely conventional view, and one that in a period of heightened social tension enjoyed wide currency. However, there was another view. By implication it rejected sensationalist images of a

132. *Tudor economic documents*, vol. 2, ed. Tawney and Power, pp. 339-46.

criminal sub-culture or a dangerous class. We find evidence of it not among contemporary legal commentators whose writings are filled with images of depravity and wickedness but in passing references in diaries and commonplace books. Oliver Heywood, for example, makes frequent and loud condemnations of the lax morality he found in Halifax: drunkards, gamblers and fornicators are singled out for withering comment. By way of contrast, property offences are recorded matter-of-factly, and property offenders do not come in for the same kind of reproach that the 'immoral' attract.'¹³³ Henry Best, the yeoman farmer from Elmswell, also gives voice to the unsensationalised view in his farming book. Best's concern with crime did not spring from the moralist's sense of righteousness or from the magistrate's sense of discipline and duty, but from the businessman's concern with profit and loss. His was the hard-headed view, unburdened by alarmism and invective, and for that reason a more trustworthy index of general attitudes to property crime. Lodged between advice on how to get the best price for sheep and what rates to pay harvest workers is his observation that 'occasion is sayd to make a theefe ...'.¹³⁴ According to this view, ordinary men and women broke the law without becoming outlaws, or, in Hext's words, 'devoted to [a] wicked course of lief'.

133. Heywood, *Diaries*, vol. 2, pp. 228, 286-87.

134. *The farming and memorandum books of Henry Best*, ed. Woodward, p. 140.

Chapter Seven

Prosecutors and constables

If property offenders were typically poor, what of the men who brought them before the courts? What was the background of those victims who decided to prosecute? And what of the constables who played an important role in the prosecution process once a criminal complaint had been made? How did the social profile of these men differ from offenders, and what implications did this have?

Douglas Hay has argued that the eighteenth-century prosecution process was dominated by élite groups who used the law as 'a selective instrument of class justice'.¹ This has become something of a coconut shy for historians of crime and the criminal law. A more complex model has been suggested in which 'positive attitudes to the criminal law' are seen as having gained wide and deep penetration: 'plebeians and underdogs' were among those who went to law.² 'The criminal law and its procedures', argues John Langbein, 'existed to serve and protect the interests of people who suffered as victims of crime, people who were

1. 'Property, authority and the criminal law', pp. 48, 52.
2. J. Brewer and J. Styles, *An ungovernable people: The English and their laws in the seventeenth and eighteenth centuries*, Introduction; P.J.R. King, 'Decision-makers and decision-making in the English criminal law, 1750-1800'; John Langbein, 'Albion's fatal flaws'.

overwhelmingly non-élite ... we often cross a class line when we move from the offender to his victim, but not a class gulf.' 'Prosecution', he concludes, 'was not the preserve of the ruling class.'³ Was this true of Yorkshire in the mid seventeenth century?

It is important to be clear about the composition of what is variously called the 'ruling class' or 'the propertied élite'. In its narrowest sense it might be taken to refer exclusively to the leading county gentry and aristocracy. However, it seems legitimate to use a broader definition which would include men of the 'middling sort', like those at Halifax who increasingly came to dominate the parish's political, economic and administrative system. They were part of a local ruling class, and, as the following suggests, it would be a serious misreading of power and class relations to lump them together with ordinary labourers and artisans in a general 'non-élite' category.

I

Table 7.1 outlines the social profile of prosecutors from Halifax parish in cases of property crime coming before York assizes and West Riding quarter sessions between 1654 and 1670. The sample is small and this must be kept in mind when analysing the data (it is based on the names of forty-one prosecutors that could be positively matched with the 1664 hearth tax returns;

3. Langbein, 'Albion's fatal flaws', pp. 97, 101, 102.

TABLE 7.1
Property crime prosecutors in Halifax parish, 1654-1670,
compared with the 1664 hearth tax returns

<i>Social group</i>	<i>n.</i>	<i>%</i>	<i>% of group in parish</i>
'A'	15	36.6	2.6
'B'	15	36.6	14.8
'C'	7	17.1	16.4
'D'	3	7.3	31.9
'E'	1	2.4	34.3
TOTAL	41	100.0	100.0

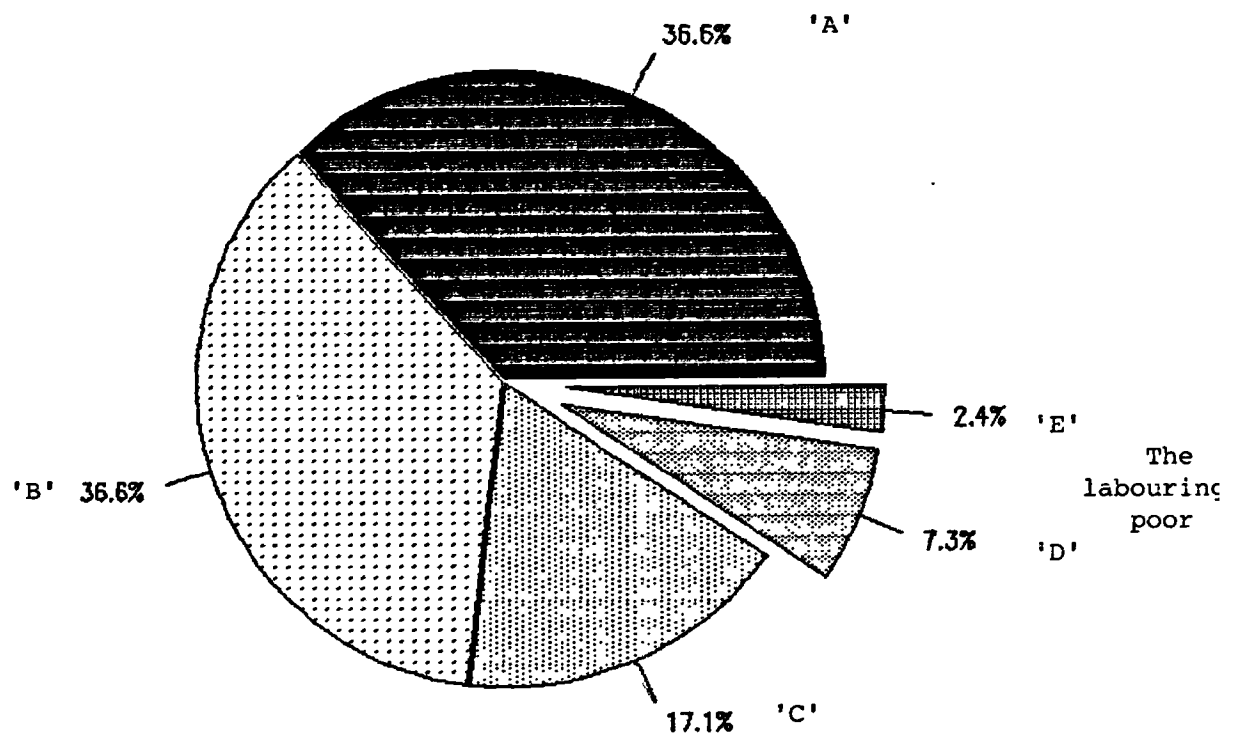
- NOTES: 1. See Table 3.4 (p. 65) for the definitions behind the 'social groups' used here.
2. The names of twenty-six of the sixty-seven men and women who appeared as prosecutors at York assizes and West Riding quarter sessions between 1654 and 1670 could not be positively matched against the those contained in the hearth tax lists.
3. Four men, Richard Doliffe, Thomas Pannell, Thomas Thornhill (all in group 'A'), and Thomas Manckes (group 'C') undertook two prosecutions each. All have been counted once for each separate prosecution.
4. It must be emphasised that the assize records on which the table is partly based are incomplete, and that therefore the names of some prosecutors have been lost.

SOURCES: WYRO, QS 4/4-9; PRO, ASSI 44/5-8, 19; E.179/210/393.

the names of another twenty-six could not be matched). Thirty prosecutors (73.2%) were drawn from the two highest social groups, 'A' and 'B'. As Table 7.1 also shows, together these two groups constituted less than a fifth of the parish's population. So, not only were prosecutors drawn preponderantly from the élite, they show up in the table out of all proportion to their numbers in the community.

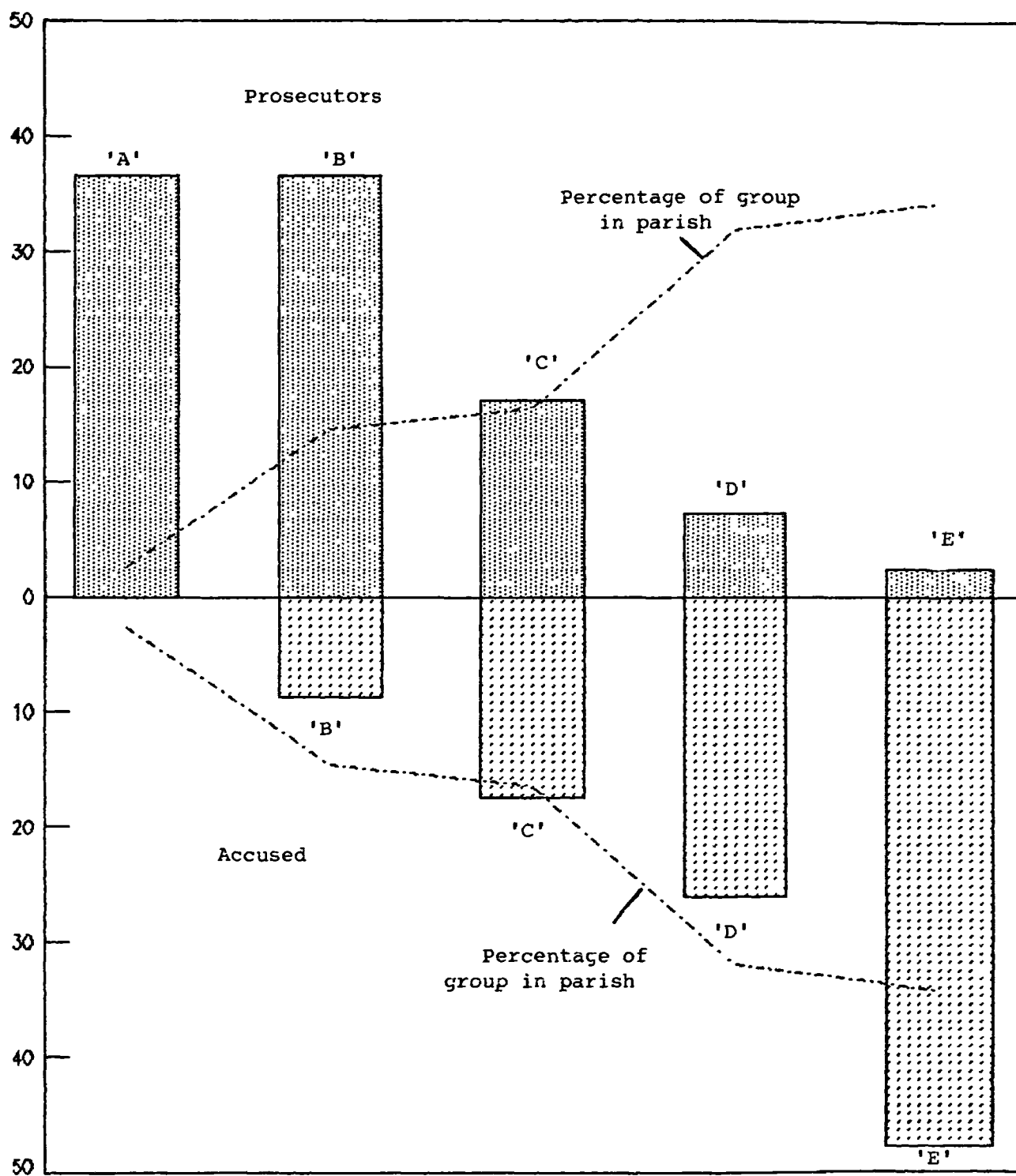
The proportion of prosecutors belonging to the less affluent group 'C' is less than half that of either groups 'A' or 'B'. However, it is more balanced, and roughly corresponds to the group's overall size in the community (17.1 and 16.4% respectively).

FIGURE 7.1:
Property crime prosecutors in Halifax parish, 1654-1670 compared
with 1664 hearth tax returns



NOTES and SOURCES: As in Table 7.1

FIGURE 7.2:
Property crime prosecutors and accused in
Halifax parish, 1654-1670



NOTES and SOURCES: As in Table 7.1 and Table 6.13

There is, however, a massive imbalance at the bottom end of the social scale. The labouring poor (groups 'D' and 'E') comprised a little more than two-thirds of Halifax's population but constituted under 10% of the prosecutors (Figures 7.1 and 7.2 illustrate the uneven social profile of prosecutors; the latter also makes a comparison with the social profile of property offenders - see Table 6.13).

The hearth tax returns, of course, provide only a rough index of relative wealth. The lay subsidy rolls offer useful supplementary information. These show that six of the twenty-seven people from the parish who brought prosecutions for property crimes to West Riding quarter sessions between 1638 and 1642 (there are no known assize cases from this period) contributed to the 1641 or 1642 lay subsidies, which probably brackets them among the wealthiest 1-2% of the parish's population, although allowance must be made for the idiosyncracies and inequalities of subsidy assessment.⁴

4. Prosecutors who contributed to lay subsidies (PRO, E.179/209/363 (1641), E.179/209/377 (1642) and E.179/262/10 (1664)) included John Lumme (Northowram, 1641 and 1664), John Dixon (Sowerby, 1642), John Thorp (Hipperholme cum Brighouse, 1641), Gilbert Brookesbank (Midgley, 1642), Richard Ramsden (Rastrick, 1641 and 1642) and Abraham Greenwood (Worland, 1641), William Antrobus (Halifax, 1664). For the dealings of these men with the courts: WYRO, QS 4/1 (indictment of Mary Bentley, Epiphany 1638, Wakefield sessions - Thorp), (indictment of Jeremy Walker *et al*, Summer 1638, Wakefield sessions - Brookesbank), (indictment of Alice Mellor, Easter 1640, Pontefract sessions - Lumme), (indictment of Nicholas Garlicke, Epiphany 1641, Wakefield sessions - Dixon), (indictment of Robert Wood, Epiphany 1642, Wakefield sessions - Ramsden), (indictment of Jonas Hemingway, Summer 1642, Wakefield sessions - Greenwood); PRO, ASSI 44/11 (indictment of Grace Batty, Lent 1665 - Antrobus).

The taxation records have their limitations, but it is possible to confirm the general picture they indicate about the status of Halifax prosecutors from a variety of administrative, legal and parish-based sources. One Halifax prosecutor was John Hodgson of Colley, esquire, an officer who fought with the Parliamentary army, and an active JP during the Interregnum. Others included Joshua Horton of Sowerby, esquire, also a JP, and John Thornhill of Fixby, esquire, a member of an old-established magisterial family.* Other influential local gentlemen who went to court to prosecute property offenders included Anthony Foxcroft, a governor of the Halifax workhouse in the later 1630s, a governor of the local grammar school and owner of extensive properties in Halifax, Skircoat, Southowram, Ovenden, Northowram, Warley and Elland.*

5. WYRO, QS 4/5, f. 74v. For Hodgson's activities in the parish: PRO, ASSI 45/5/4/45-47, 45/5/5/5, 45/5/5/20-21; 47/20/2/69-70. Cf. E.179/210/393, m. 56; *Autobiography of Captain John Hodgson*, ed. J.H. Turner; and above, p. 77n., 110-11. For Horton (who had corn stolen from his barn) see ASSI 45/5/6/18; 42/1, f. 41; E.179/209/363, 179/262/10; CDA, HAS/B:22/27/3-4; 'OLP' 9, 175. In 1666 Thornhill prosecuted John Hirst of Mirfield, labourer, at quarter sessions for stealing iron bars worth 4s, and the following year he prosecuted John Shawe of Fixby, labourer, and Jane Isey of Fixby, spinster, for stealing wool valued 20d: WYRO, QS 4/8, ff. 55v, 173v. The Thornhills were the richest family in Fixby: Thomas Thornhill contributed £4-18-8 of the £8-6-8 levied on the township in the 1641 lay subsidy: PRO, E.179/209/363.
6. Foxcroft preferred an indictment at quarter sessions against Elyas Nutter of Skircoat, labourer, and Mary Pennington of Halifax for the theft of shirts and petticoats worth 10s 8d: WYRO, QS 4/9, f. 67v. It is a measure of Foxcroft's wealth that he was the largest single contributor in Halifax to the 1641 lay subsidy (to which only seventeen people in the parish contributed): PRO, E.179/209/363. He contributed again in 1664: E.179/262/10. For further information on Foxcroft: CDA, 'OLP' 10, 115, 168; SH:6/LD/45; LCA,

Tobias Barraclough, William Antrobus, Richard Ramsden and millowner George Firth, all from gentry families, also appear in the sample.'

There were also prosecutors drawn from the yeomanry and more substantial tradesmen, men who belonged to the parish's office-holding stratum. William Aspinall, of Halifax, mercer, was one. He was constable of Halifax township in 1651, churchwarden in 1653, sub-collector of the excise in 1654 and overseer of the poor in 1658.* Timothy Kirby, variously described as yeoman and baker, was churchwarden in 1655, township sworn man in 1656 and 1657, constable in 1661, and leet juror in 1664.* Michael Wardle was deputy constable of Halifax in 1638 and again between

(n, 6 cont.)

TN/HX/A/208A; Watson, *History*, pp. 600, 609-27; T.W. Hanson, 'Jeremy Bentley, Halifax's first MP', p. 357; and above, pp. 95n, 98, 104.

7. For the dealings of these men with the courts: WYRO, QS 4/8, f. 218 (Barraclough); QS 4/1 (indictment of Robert Wood, Epiphany 1642, Wakefield sessions - Ramsden); PRO, ASSI 44/11 (indictment of Grace Batty, Lent 1665 - Antrobus); ASSI 45/5/5/6 (Firth).
8. In 1651 Aspinall prosecuted Anne, wife of Luke Redihalghe of Halifax, labourer, for stealing 9 yds. of satin cloth worth 36s: WYRO, QS 4/3, f. 89v. For further details on Aspinall: CDA, MIC:8/100; 'OLP' 9 and 179; WYRO, D 53/7 (June 24, July 1 and 8, 1654); YAS, MD 225/1/377 (Halifax township presentments, Michaelmas).
9. At the 1660 summer meeting of quarter sessions Kirby prosecuted Alice Toppin of Halifax, spinster, for stealing household goods valued at 5s 10d. For further details on Kirby: PRO, E.179/210/393, m. 53v.; E.179/210/394a, f. 31 (hearth tax returns of 1664 and 1666: Kirby was rated for an eleven-hearthed house, one the largest in the parish); ASSI 45/2/1/106-11c; YAS, MD 225/1/387 (Halifax township presentments, Michaelmas), 225/1/382/A (Halifax township presentments (paper drafts), Michaelmas and Easter), 225/1/389 (Halifax leet jury, Easter); CDA, MIC:8/100.

1644 and 1649.¹⁰ Mr. Richard Doliffe, proprietor of one of the town's largest inns (it had eleven hearths according to the 1664 hearth tax returns), was churchwarden in 1661, constable in 1670 and, at different times, was called to serve on assize juries.¹¹

The wealth and power of the great bulk of Halifax prosecutors is in stark contrast to the grinding poverty of most property crime accused.¹² This discrepancy is shown in Figure 7.2, and it can be further illustrated by contrasting the backgrounds of individual prosecutors and offenders. Consider the relative positions of John Lumme and Alice Mellor. John Lumme, esquire, lived at Westercroft in Northowram, and was one of the leading men in local affairs during the Civil War and Interregnum.¹³ He was one of nine

10. Wardle brought an indictment at quarter sessions against Judith, wife of Edward Branthwaite of Halifax, labourer, for stealing malt valued £4: WYRO, QS 4/2, f. 89. For Wardle's role in parish affairs: CDA, 'OLP' 175; YAS, MD 225/1/364/A (Halifax township presentments, paper draft, Michaelmas). He also served on at least one coroner's jury in this period: PRO, KB 9/836, m. 86.
11. Doliffe prosecuted Thomas Draper of Halifax, labourer, at the 1657 Easter quarter sessions for stealing wool worth 10d: WYRO, QS 4/5, f. 1. For details on Doliffe: YAS, MD 225/1/396 (Halifax township presentments, Michaelmas); WYRO, D 53/7 (list of churchwardens, 1670); PRO, E.179/210/393, m. 53v; 179/210/394a, f. 32v; ASSI 47/20/7/48v, 693 (petitions requesting release from jury service and list of jurors: it is unclear whether he was summoned as a grand or petty juror).
12. Above, pp. 272-73.
13. Lumme is described as 'esquire' in a commission of the peace (WYRO, Q/1), but this may have been an honorary title since an earlier legal document (CDA, SH:1/OB/1640) describes him as 'yeoman'.

sequestrators of Halifax vicarage, appointed to that position by Parliament in 1643.¹⁴ In 1651 he became a member of the Commission of Pious Uses, and three years later he was one of the select band of men who voted for Halifax's first MP (the narrow franchise restricted the number of voters to fifty-nine).¹⁵ Shortly afterwards Lumme was made a justice of the peace in the West Riding.¹⁶

Lumme's appearance as a prosecutor was at the Easter meeting of West Riding quarter sessions in 1640. There he preferred an indictment against Alice Mellor of Halifax, spinster, for stealing eight yards of kersey valued 6s 2d.¹⁷ Mellor had previously escaped from the house of correction at Wakefield, and had been a particularly refractory inmate of the Halifax workhouse. In 1637 she had been arrested while 'drunk in the company of three fiddlers' and was committed to custody on suspicion of felony.¹⁸ In the same year she

14. LJ, vol. 5, pp. 662, 666; CJ, vol. 2, p. 1000.
15. CDA, HAS/B:22/27/3-4; 'OLP' 9. Cf. SH:1/OB/1658; SH:4/T.HX/1636; MIC:8/47; T.V. Hanson, 'Halifax parish church, 1640-1660', pp. 52, 58; J. Lister, 'The history of Shibden mill', p. 235. Lumme also served on inquest juries: PRO, KB 9/857, m. 147; ASSI 44/2 (inquisition held on view of the corpse of Nathan Normanton, September 9, 1648).
16. WYRO, Q/1. There is no record of Lumme having been active as a magistrate. He did not attend quarter sessions and there are no recognisances or depositions in either the assize or quarter sessions files bearing his name.
17. WYRO, 4/1 (Easter 1640, Pontefract sessions).
18. CDA, MISC:181/1 (entries dated December 6 and 13, 1637).

was indicted at quarter sessions as an incorrigible rogue and branded on the shoulder.¹⁹

The distance between Lumme, the upright, diligent local official and landowner, and Mellor was immense. To the Halifax élite Mellor must have epitomised the undisciplined, sinful, and habitually criminal poor who in the 1630s became the target of their reforming campaigns.²⁰ The discrepancy between the backgrounds of Lumme and Mellor underlines the yawning social, cultural and economic gap between Halifax prosecutors and accused. We see the same gap again and again in the court actions initiated by the Halifax gentry and the better sort: almost without exception the offenders belonged to the poorest sections of the community, the majority being indicted for stealing goods, often corn or other food, valued at between a few pence and a few shillings. In mid-seventeenth-century Halifax at least criminal prosecutions were undertaken primarily by the propertied élite against poor men and women.

The diversity of Halifax's economic and social structure provides a variegated background for looking at the social profile of prosecutors from the parish. Halifax prosecutors followed a variety of trades and professions, and they inhabited both urban and rural areas. The wealthiest prosecutors lived in the urban districts, but there were also rich prosecutors from

19. WYRO, QS 4/1 (Easter 1638, Pontefract sessions).

20. Above, pp. 84-107.

the rural out-townships, men like John Pilling, owner of Stansfield Hall, and his neighbour John Fielden (Stansfield was one of the most rural of the out-townships).²¹

However, any conclusions derived solely from the experience of one parish, no matter how large or diverse, would be inadequate, and potentially misleading. The evidence from Halifax needs corroboration, and there are three other sources to provide this.

II

The first comes from the occupational background of prosecutors recorded on assize depositions. These prosecutors came from all corners of the county, from urban areas like York, Hull and Leeds to remote rural settlements like Rise, Sinnington and Egton. Between 1640 and 1661 examining magistrates recorded the additions of 204 male prosecutors (as distinct from witnesses). These 204 are a minority of those whose

21. Pilling prosecuted Dorothy Eastwood of Stansfield, spinster, for stealing a lamb worth 3s at the Epiphany 1661 quarter sessions: WYRO, QS 4/6, f. 32v. Stansfield Hall was the township's largest dwelling (according to the 1664 hearth tax returns it had eight hearths: PRO, E.179/210/393, m. 64). Pilling was one of twelve inhabitants of Stansfield to be assessed for the 1664 subsidy: PRO, E.179/262/10. In 1654 he was one of the fifty-nine voters in Halifax's first parliamentary election: CDA, 'OLP' 9. In 1651 Fielden prosecuted John Kay of Heptonstall, labourer, for stealing 3 sheep: WYRO, QS 4/3, f. 128v. For the Fielden family see J. Harber *et al*, *Shore in Stansfield: A Pennine weaving community, 1660-1750*, pp. 10-23.

TABLE 7.2
Occupational status of property crime prosecutors,
taken from assize depositions, 1640-1661

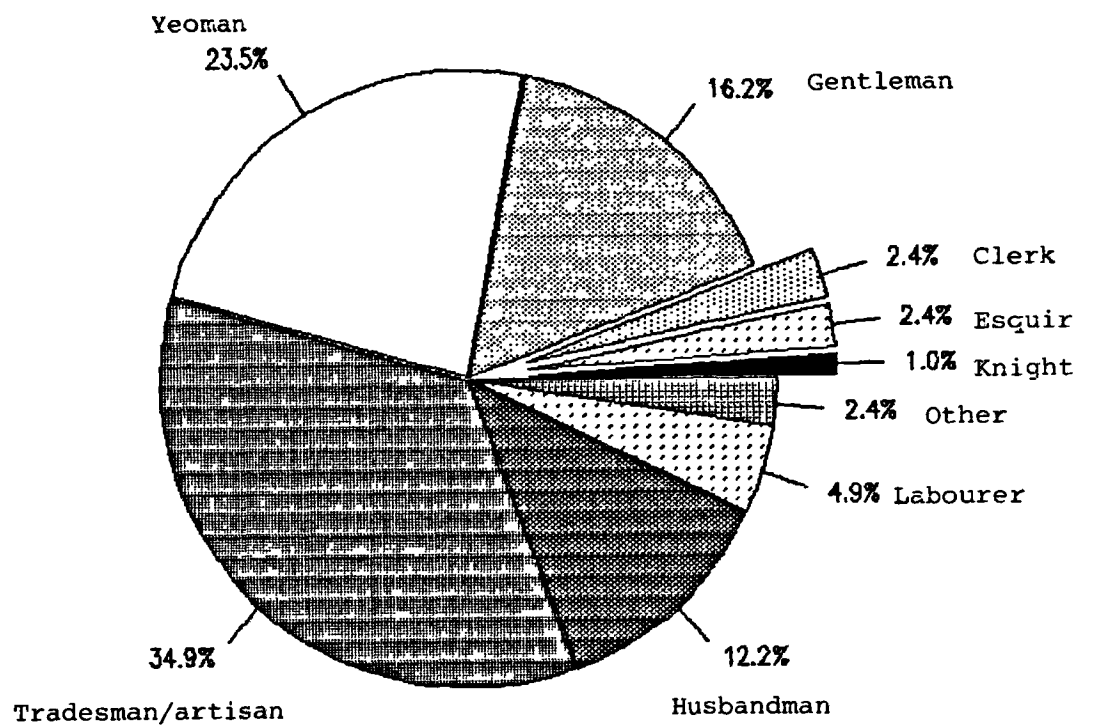
	n.	%
Knight/Bart.	2	1.0
Esquire	5	2.4
Clerk	5	2.4
Gentleman	33	16.2
Yeoman	48	23.5
Tradesman/Artisan	71	34.9
Husbandman	25	12.2
Labourer	10	4.9
Other	5	2.4
Total	204	99.9

NOTES: 1. Cases involving Yorkshire magistrates only.
2. In the *Other* category are an 'apothecary',
'postmaster', 'grassman', 'warriner' and
'ferryman'.

SOURCES: PRO, ASSI 45/1/2-45/6/1; 44/1-8, 19.

informations were noted by the magistrates: the majority did not have their occupations recorded. This was due to differences in the format used in taking depositions: some JPs noted occupation, others did not; and in the same way some got prosecutors to sign or mark their statements, others did not. But although the available information is restricted to a minority, it is certainly a good index of the assize prosecutors' backgrounds. There is no reason to think that the sources have an internal bias in favour of any particular occupational group. It is also worth remembering that the depositions form the most consistently reliable and accurate class of legal record available for this period, though it would be as well to bear in mind the possibility that when victims

FIGURE 7.3:
Occupational status of property crime prosecutors,
taken from assize depositions, 1640-1661



NOTES and SOURCES: As in Table 7.2

brought their complaints they deliberately inflated their status in the hope of impressing the magistrate.

The occupational background of assize prosecutors is set out in Tables 7.2-7.3. Table 7.2 shows that the largest single group, a loosely defined group, was composed of tradesmen and artisans (seventy-one individuals, 34.8% of the sample). Within this group there would have been significant variations of wealth and status. A number followed poorer trades, tailors and shoemakers for example, but a substantial proportion followed wealthier trades: drapers, mercers, goldsmiths, merchants, carriers, millers and farmers of horse and fulling mills, badgers, tanners, maltsters and innkeepers.²² The different trades are set out in Table 7.3. It is important to emphasise that, like the well-to-do Halifax tradesmen and artisans, many of these men enjoyed considerable standing and authority in their communities, that they were part of the local ruling class. Compared to the county gentry they came from relatively modest backgrounds, but it would be a mistake to dismiss their standing and authority because they were non-gentry.

It seems reasonable to bracket a minimum of thirty-three tradesmen and artisans in Table 7.3 (those

22. Innkeepers, as distinct from alehousekeepers, tended to be substantial men. According to Peter Clark, *The English Alehouse: A social history, 1200-1830*, p. 7, 'By the sixteenth century innkeepers were frequently members of the local economic élite'. The Halifax innkeeper, Richard Doliffe, above p. 284, was certainly part of the local economic and political élite.

TABLE 7.3
Occupations followed by tradesmen and artisans who prosecuted
property crimes at York assizes, 1640-1661

	<i>n.</i>	<i>%</i>
Mercer*	7	9.9
Butcher	7	
Miller*	7	
Clothier	6	8.4
Draper*	5	7.0
Merchant*	3	4.2
Blacksmith	3	
Carpenter	3	
Tailor	3	
Cutler	2	2.8
Tanner*	2	
Innholder*	2	
Weaver	2	
Shoemaker	2	
Mason	2	
Carrier*	2	
Dyer	2	
Saddler	1	1.4
Goldsmith*	1	
Combsmith*	1	
Badger*	1	
Hardwareman	1	
Skinner	1	
Baker*	1	
Cordwainer*	1	
Maltster*	1	
Pinner	1	
Haberdasher*	1	
Total	71	99.7

NOTE: * denotes wealthier trades (based on C.G.A. Clay, *Economic expansion and social change: England, 1500-1700*; Clark, *The English Alehouse*; VCH, *City of York*; and information in the assize depositions.

SOURCE: As in Table 7.2.

marked with a *) among the economic élite. (This is in distinction from property offenders who were described as artisans and tradesmen, the great majority of whom followed poorer trades.)²³ Some or all of the cutlers,

23. Above, pp. 268-70.

clothiers and dyers, to take only three of the remaining trades, may also have been relatively wealthy, occupying large houses and employing journeymen or servants of some description: indeed, some of the men in these trades appear in the table because they were prosecuting their servants.²⁴ If we accept that at least some of the clothiers, cutlers and so forth were probably well-to-do, then wealthy tradesmen and artisans account for approximately 20% of the 204 prosecutors. If this 20% is added to the yeomen (almost a quarter), and to the clerks, gentry and above (20%) the preponderance of prosecutors from the élite groups is clearly visible: they constitute almost two-thirds of the total.

Yeoman and gentry prosecutors alone comprise 45% of the sample. It is doubtful whether these two groups together made up as much as 12% of Yorkshire's population (probably much less, although, obviously, there were regional variations).²⁵ So, as in the case of Halifax, the élite groups appear as prosecutors at assizes out of all proportion to their numbers in the community.

The second body of evidence to corroborate the Halifax findings comes from quarter sessions

24. For example, John Stainforth of Sheffield, hardwareman, who prosecuted a servant for stealing money: PRO, ASSI 45/5/1/6. According to D.G. Hey, 'A dual economy in south Yorkshire', p. 109, cutlers in the Sheffield-Rotherham region were relatively prosperous.

25. Above, p. 36.

indictments.²⁶ Between 1637 and 1665 1778 property crime indictments (excluding those for poaching which were misdemeanours) came before West Riding quarter sessions. In 167 of these (just under 10%) the prosecutors were described as clerk, gentleman, or above. At some sittings of the court gentry prosecutors either out-numbered or equalled the rest.²⁷ However, these 167 are certainly only a fraction of the real number of the gentry prosecutors. This is because their identification in the records is inconsistent: William Luddingden, for example, is described as gentleman on one indictment but not on another, as is Thomas Karesforth.²⁸ However, even at the underestimated level of 10% it is clear that in mid-seventeenth-century Yorkshire the gentry formed a higher proportion of property crime prosecutors than they did, for example, in eighteenth-century Essex.²⁹

26. There were, of course, important differences between cases triable at assizes and at quarter sessions. Thefts involving goods of higher value normally went to assizes. These might be expected to involve victims who were better off than those who took petty thefts to quarter sessions.
27. For example, at the 1658 Epiphany meeting at Barnsley where of the eleven property crime indictments one was preferred by a viscount, one by a clerk, two by esquires, and two by gentlemen: WYRO, QS 4/5, ff. 77-81v. Four of the ten property crime indictments laid before magistrates at the 1653 Epiphany meeting of quarter sessions at Barnsley (in which the victim was identified) were preferred by men described as gentlemen: QS 4/4, ff. 19-22.
28. WYRO, QS 4/2, ff. 6 and 70 (Luddingden); QS 4/5, ff. 120 and 171 (Karesforth).
29. According to P.J.R. King, 'Crime, law and society in Essex, 1740-1820', p. 182, the gentry accounted for 5.5% of prosecutors in felony cases at Essex quarter sessions.

It is noteworthy that active magistrates bulk large among the gentry prosecutors at both assizes and quarter sessions. Twenty-five of the 167 identified gentry prosecutors at West Riding quarter sessions were JPs at the time they undertook the prosecution. They included senior members of the West Riding commission of the peace like Sir John Savile of Lupset, high sheriff of the county in 1649, who preferred an indictment in 1658 against three Ossett spinsters for stealing corn.³⁰ Colonel John Bright of Carbrook and Badsworth, a sometime governor of York and Hull, high sheriff (twice), MP for the West Riding and Visitor of Oxford University, was another JP to prosecute property crime at the courts (the accused was a local cooper who was alleged to have stolen wood).³¹ Sir Thomas Dickenson of Ouseburn, an alderman and lord mayor of York as well as one of the most active Interregnum magistrates, prosecuted a local labourer for stealing one of his sheep.³² Other JPs who prosecuted property crimes at quarter sessions included John Stanhope, Henry Fairfax, George Byard, Thomas Eastofte, Richard Tolson, Christopher Copley, John Mauleverer, Henry Arthington, Sir Thomas Dawney, and Thomas Jopson.³³ At

30. WYRO, QS 4/5, 133v. Cf. QS 4/2, f. 101.

31. Peter Roebuck, *Yorkshire baronets, 1640-1760: Families, estates and fortunes*, pp. 212-22; WYRO, QS 4/3, f. 53.

32. WYRO, QS 4/5, f. 47v.

33. WYRO, QS 4/1 (indictment of George Holland, Epiphany 1638, Barnsley sessions - Dawney), (indictment of William Johnson, Summer 1638, Rotherham sessions - Mauleverer), (indictment of Anne Crabtree, Michaelmas 1638, Halifax sessions -

assizes Sir Robert Barwick, a prominent lawyer and JP, prosecuted a woman for breaking into his barn and stealing corn.³⁴ William Ingleby of Ripley and Hugh Bethell of Rise, both JPs, also initiated assize prosecutions.³⁵

By undertaking their own prosecutions were JPs setting an example? Were they trying to encourage prosecutorial activity among victims of property crimes, or certain types of property crimes? A familiar complaint at this time was that too many victims were negligent about taking offenders before the courts. The system of binding over to give evidence was an attempt to ensure that victims and witnesses followed through with the prosecution, but it was unable to prevent under-reporting. In the eighteenth century a series of initiatives was designed with the specific aim of encouraging victims to go to law.³⁶ In the absence of such initiatives during the mid seventeenth century JPs, by repeatedly taking petty offenders before the courts, may have been attempting to stiffen the resolve of victims by setting a highly public example.

(n. 33 cont.)

Stanhope), (indictment of Henry Hoyle, Michaelmas 1638, Doncaster sessions - Jopson), (indictment of Anne Smyth at same sessions - Copley); QS 4/2, f. 50 (Arthington); QS 4/3, f. 122v (Fairfax); QS 4/4, f. 196v (Tolson); QS 4/5, ff. 77v (Byard), 78 (Eastofte).

34. PRO, ASSI 45/4/1/133. Barwick himself took the depositions in the case.

35. PRO, ASSI 45/3/1/10 (Ingleby) and 45/3/1/73 (Bethell).

36. J.M. Beattie, *Crime and the courts in England, 1660-1800*, pp. 42-44, 48-55; Langbein, 'Albion's fatal flaws', p. 102.

They may also have been spearheading a drive against particular types of crime associated primarily with the poor. JPs prosecuted several men and women for stealing their corn and wood. Thomas Jopson, for example, prosecuted two people, a man and a woman, for stealing between them eighteen sheaves of oats valued at 4s 2d, and John Mauleverer charged a labourer with stealing barley worth 3d.³⁷ These, and at least some of the other allegations of stealing corn, may have involved gleaning by the poor (in the seventeenth century legally an ambiguous activity). JPs, at the same time as they were, as landowners, consolidating and extending their own property rights against the claims of custom, may have been serving notice on the local gentry and yeomanry that such prosecutions would receive sympathetic treatment from the bench. Similarly, John Bright and Henry Fairfax were among gentry prosecutors who took people to court for stealing wood, something the poor often justified by an appeal to custom and something farmers just as often treated as law-breaking.³⁸

Several other gentry prosecutors were men with close connections with the criminal justice machinery or who themselves filled judicial or quasi-judicial

37. VYRO, QS 4/1 (indictments of Henry and Elizabeth Hoyle, Michaelmas 1638, Doncaster sessions; indictment of William Johnson, Summer 1638, Rotherham sessions).

38. VYRO, QS 4/2, ff. 107, 122v; 4/3, f. 53; 4/1 (indictment of Elizabeth Cubbage, Summer 1638, Rotherham sessions). See B. Bushaway, *By rite: Custom, ceremony and community in England, 1700-1880*, ch. 6, for wood-stealing and its context.

office. Charles Jackson, for example, was a coroner.³⁹ John Stacie, William Luddingden and John Revell all served as quarter sessions grand jurors.⁴⁰ Luddingden even served on the grand jury that endorsed his bill against a labourer for stealing his sheep.⁴¹ Edward Bowles, the influential puritan divine at York, was popular (among judges and magistrates) as a preacher of assize sermons during the Interregnum.⁴² Major-general John Lambert, in charge of Yorkshire between 1647-1650 and again between 1655-1657, gave evidence against a petty thief for stealing money.⁴³

There can be no denying that these were influential and well-known men, and their appearance before the courts, where they were prosecuting men and women from the lowest social groups, again illustrates the gulf that separated prosecutor from offender. One final illustration of this point: in January 1640 Anne Pearson of Attercliffe was indicted at the Barnsley meeting of West Riding quarter sessions for stealing a silver spoon valued at 6s. Pearson was described as the

39. WYRO, QS 4/6, f. 6; QS 4/7, ff. 62v-63. For Jackson see PRO, ASSI 42/1, ff. 93-94, 109, 135, 150 and *passim*.

40. WYRO, QS 4/1 (indictment of John Huscroft, Michaelmas 1638, Doncaster sessions); QS 4/2, f. 6; QS 4/3, f. 53.

41. Luddingden was foreman of the grand jury and in addition to prosecuting the sheep stealer, gave evidence against another man for stealing 18d worth of barley sheaves from an unknown person, and against the same man for unlawfully killing a pig: WYRO, QS 4/2, ff. 70, 71).

42. PRO, ASSI 45/1/5/66; *Dictionary of national biography*.

43. PRO, ASSI 45/4/3/94.

TABLE 7.4
Literacy levels of property crime prosecutors, taken
from assize depositions, 1640-1661

	n	%
Literate	69	63.3
Illiterate	40	36.7
Total	109	100.0

NOTE: Yorkshire cases only.

SOURCES: As in Table 7.2.

wife of a labourer. Her prosecutor was Stephen Bright of Carbrook, father of Colonel John Bright, one of the richest and most powerful men in the region. He was the bailiff of the Earl of Arundel's huge Hallamshire estate, and known as a strict, even ruthless, landlord. A measure of Bright's wealth comes from his expenditure of more than £10,000 on real estate in south Yorkshire and north Derbyshire between 1616 and 1642. Shortly before his death in 1642 he was granted a coat of arms, 'being a person of £1,000 a year ... of credit and respect in the affections of the gentry, and of extraordinary merit'.⁴⁴ It is difficult to see how the class gulf between accused and prosecutor in this case could have been any wider.

The third body of evidence to throw light on the social background of prosecutors derives from indications of subscriptional literacy. Table 7.4 shows that of 109 male prosecutors who marked or signed their

44. WYRO, QS 4/1 (Epiphany 1640, Barnsley sessions); Roebuck, *Yorkshire baronets*, pp. 203-5. At the time Bright undertook the prosecution he was technically still a yeoman.

depositions between 1640 and 1661, sixty-nine, almost two-thirds, were able to sign their names, another indication that the bulk of prosecutors came from the élite groups. It is perhaps worth pointing out that while the ability to sign is a fairly good pointer to the prosecutor's status the inability to do so is not necessarily evidence of lowly social origins. John Bracke and Thomas Wilson, for example, could only append marks, although both were described as yeomen.⁴⁵

The evidence of subscriptional literacy, of the occupational background of assize prosecutors, of gentry prosecutors at quarter sessions, of magistrates as prosecutors, taken with the local evidence from Halifax, points compellingly to the conclusion that mid-seventeenth-century Yorkshire prosecutors were drawn predominantly from the propertied élite. The standing of many was restricted to their immediate neighbourhood. Nevertheless, in that neighbourhood they were powerful men. Others were men of county-wide reputation and importance, some had national standing. When they took petty offenders to court it was in part to seek remedy for a private wrong. At the same time, it could not help but being, in front of the throng of jurors, witnesses, officers, petitioners, spectators and accused, a very public statement about the rights of property and about the élite's expectations of the criminal law in defence of those rights.

45. PRO, ASSI 45/2/1/64; 45/4/1/107.

III

Prosecutors were not, it must be conceded, drawn exclusively from the ranks of the propertied élite. Poor people also went to court as prosecutors, and the fact that they did so has been cited as evidence for the depth of penetration of 'positive attitudes towards the law'.⁴⁶ These positive attitudes may have reached John Tillison of Halifax. Tillison was one of the parish's labouring poor, assessed in 1664 for one hearth.⁴⁷ Two years later he went to quarter sessions to prosecute Samuel Lister of Halifax, labourer, a man exempted from the 1664 hearth tax on grounds of poverty, and in all probability little worse off than Tillison.⁴⁸ Lister's crime was to have stolen two hens and a cock valued at 11d. The prosecution was successful: the culprit was convicted of petty larceny and probably whipped.

However few other Yorkshire cases were initiated by labouring people. At Halifax the labouring poor made up two-thirds of the population but constituted only 10% of the prosecutors in Table 7.1. Table 7.2 shows that only 4.9% of assize prosecutors were styled labourer, and that even if we add husbandmen to them

46. King, 'Decision-makers and decision-making in the English criminal law'.

47. PRO, E.179/210/393, m. 53v.

48. PRO, E.179/210/393, m. 54; WYRO, QS 4/8, f. 56.

the labouring poor still account for less than a fifth of prosecutors."

Nor should it be imagined that because a labourer prosecuted a poor neighbour he had necessarily absorbed 'positive attitudes to the law'. There is no evidence as to what Tillison, for example, thought as he carried forward his prosecution; but to infer that by using the courts he, however unconsciously, 'believed in the law' seems to stretch a point. There were probably a number of motives involved, not least one of unadorned utilitarianism. The fact that he went to law may mean no more than that he simply selected the most useful of several options for his immediate purposes. To be a prosecutor in the seventeenth century entailed no more of a belief in the law than it does today. Then, as now, there were those who resorted to legal remedy for no other reason than that it was, in certain circumstances, the most suitable option. Men like Tillison may also have been encouraged or pressured by richer neighbours into taking action. (The influences working on prosecutors are discussed in greater detail in Chapter Eight.)

There were also those whose prosecutions, far from indicating the penetration of 'positive attitudes',

49. This cannot be explained by claiming that the poor were less frequently the victims of property crime. As Douglas Hay, 'Property, authority and the criminal law', p. 37, observes, 'The poor suffer from theft as well as the rich, and in eighteenth-century England probably far more poor men lost goods to thieves, if only because the rich were few and their property more secure.'

demonstrate nothing more than sheer opportunism. Consider the following two examples: in 1640 Oswald Admergill of Collingham, variously described as labourer and husbandman, prosecuted a local blacksmith for stealing from him a halter valued at 2d.⁵⁰ In 1653 he was the only witness against a labourer indicted for stealing tools valued 3s 8d, the goods of William Riddall.⁵¹ Did Admergill have 'positive attitudes' to the law? This seems doubtful in view of both his earlier and subsequent appearances at quarter sessions and assizes charged with rescuing distrained goods, sheep-stealing, highway robbery and manslaughter.⁵² Similarly, Joshua Moore of Rothwell, labourer, began a prosecution at the summer 1650 quarter sessions.⁵³ He had himself already been tried for coining, was later imprisoned for debt, indicted for cattle-stealing, and in 1658 was convicted of seven highway robberies and hanged.⁵⁴

These two examples remind us that there was a cross-over, an overlap, between prosecutors and accused, and that in some respects it is misleading to

50. WYRO, QS 4/1 (indictment of John Halliday, Easter 1640, Pontefract sessions).

51. WYRO, QS 4/4, f. 7.

52. WYRO, QS 4/2, f. 102v; 4/4, f. 250; PRO, ASSI 45/4/1/1-2; 44/5 (Lent 1652); 44/7 (two indictments, Lent 1658); 47/20/6, ff. 726-32; 42/1, ff. 3, 20.

53. WYRO, QS 4/3, f. 50.

54. PRO, ASSI 45/2/1/184-87; 45/5/2/68-69; 45/5/5/25-26; 47/20/1/271-72, 298-300; 47/20/6/551v; 44/7 (eight indictments, Summer 1658); 42/1, f. 3; WYRO, QS 4/3, f. 49v; above, p. 222.

treat the two groups as separate entities. They remind us that for many people attitudes to the law were not characterised by being positive or negative, but by being ambiguous. Legality was often in the eye of the beholder. Despite Hale's homily on the common law ('singularly accommodated ... to the Disposition of the English nation, and such as by a long Experience and Use is as it were incorporated into their very Temperament ...'), and the praise heaped on it by early-modern legal commentators, the law and the criminal justice system was not a shrine ~~at which~~ the English lay public worshipped.⁵⁵ For most people the law had a primarily functional value: they were prepared to use it when it suited their purposes, ignore it when it ran counter to those purposes.

IV

Although most prosecutions were private affairs, petty constables played an important role once the victim had decided to seek legal redress. (This role is explored in greater detail in Chapter Eight.) But what kind of men were constables? How was their role influenced by their background, their place in the community and their relations with their neighbours?

Seventeenth-century commentators were generally pessimistic about the performance of petty constables

55. Sir Matthew Hale, *The history of the common law of England*, p. 30.

as communal peace keepers. Judges, magistrates and legal commentators can be found upbraiding them for inadequacy and negligence, and in the same breath sneering at what they thought were their lowly social origins. According to Sir Thomas Smith a decline in the office's importance and prestige had been matched by a deterioration in calibre of the men who filled it: 'many times artificers, labourers and men of small havor and abilitie be chosen unto that office, who have no great experience, nor knowledge, nor authoritie'.⁵⁶ Lambarde, Dalton and Sheppard voiced similar criticisms.⁵⁷ J.S. Cockburn has concluded that constables were 'effective only if instructed by conscientious justices of the peace', and 'were negligent at best and, at worst, contributed directly to lawlessness'.⁵⁸

There is no shortage of anecdotal evidence in the legal records of mid-seventeenth-century Yorkshire of constables' misdeeds, lassitude, and lack of effectiveness. The office itself had few obvious attractions, and many of those who could afford it must have been tempted to evade office by paying a

56. Smith, *De republica Anglorum*, pp. 109-10, believed that formerly constables 'were in some more reputation, approaching that authoritie which the Justices of peace nowe doth holde'.

57. William Lambarde, *Duties of constables*, pp. 3-4; Michael Dalton, *The countrey justice*, p.47; William Sheppard, *Offices and duties of constables*, pp. A2-A3, 16-19. Cf. H. Evans, 'Comic constables - fictional and historical'.

58. *Calendar of assize records: Introduction*, p. 90.

substitute. It placed the holder in the invidious position of having to mediate the demands of county or national administrations bent on fiscal, social, economic, political or religious reform, to communities that were wont to see the corollary of reform as being the disruption of local interests. At times of crisis, or during periodic bouts of reforming zeal, the higher authorities liked to crack the whip over the constable, piling on new tasks and subjecting performance to continual review. Those failing to meet the expected standards were punished by fines, often substantial ones.⁵⁹ The practice of sending out specific articles of enquiry to constables at such times added to the burdens of office. This could produce the desired effect and galvanise constables into presenting offenders. At other times it produced no more than the briefest of complacent replies to the effect that all was well.⁶⁰

59. Keith Wrightson, 'Two concepts of order: Justices, constables and jurymen in seventeenth-century England', esp. 37-39; YCA, F.7, ff. 73, 126, 127, 129, 272, 317, 324, 334, 415, 458, 486.
60. For constables' replies to the fourteen articles (1678) see PRO, ASSI 47/20/3. Many are quite detailed, others one-lined. The picture painted by the constable of Idle (47/20/3/193) was one of an undisturbed, law-abiding community: there were no recusants, no felonies or robberies, no vagrants, cottages or inmates, no unlicensed brewers, no engrossers, no servants out of service, no profane swearers, no riots or affrays, all highways and bridges were in good repair, all weights and measures lawful, the poor were all relieved by the monthly assessment. It is hard to know if this is evidence of an exceptionally disciplined and ordered community, or of a constable who was negligent or was responding to local pressures not to risk upsetting the balance of social relations by presenting offenders.

The office usually involved working as a part-time tax collector, rarely a happy task. It could entail great demands on a person's time; it could sometimes leave a man out of pocket; and, judging by the number of people indicted for assaults on constables, the risk of personal injury was far from minimal.⁶¹ During the Civil War and Interregnum the demands on the constable were greatly increased. At Sowerby the constables' accounts for the 1640s indicate a hugely increased range of activity.⁶² The dangers of the office were also increased: constables were kidnapped by soldiers, beaten and killed.⁶³ It is hardly surprising that the names of men fined for refusing to assume office pepper the court records, or that wealthier men sometimes produced paid deputies.⁶⁴

But the office was not uniformly unpopular. For ambitious local men bent on reforming their communities it represented a position of considerable influence and power. Instead of trying to avoid office there was, in some places, competition for it, a competition won by the propertied élite. We return to Halifax to see the extent of the élite's domination of the office.

61. See, for example, YCA, F.7, ff. 40, 74, 110, 125, 159; WYRO, QS 4/4, ff. 219, 222v-23, 234; QS 4/5, f. 22.
62. H. Kendall, 'Sowerby constables' accounts'.
63. CDA, SPL:143 (accounts of John Mitchell, entry dated August 4, 1645); PRO, ASSI 45/2/2/121-22; *The Fairfax correspondence*, vol. 2, ed. G. Johnson, pp. 203-4.
64. YAS, MD 225/1/353 (Halifax leet jury's presentments, Easter court); YCA, F.7, f. 163; WYRO, QS 4/5, f. 7v.

TABLE 7.5
Occupational status of Halifax township constables and deputy
constables, 1620-1670

	n.	%
Gentleman	10	20.4
Yeoman	7	14.3
Mercer	6	12.2
Chandler	5	10.2
Butcher	4	8.2
Chapman	3	6.1
Joiner	2	4.1
Tailor	1	2.0
Woolman	1	
Badger	1	
Shopkeeper	1	
Innkeeper	1	
Cutler	1	
Smith	1	
Apothecary	1	
Oildrawer	1	
Scriviner	1	
Clothier	1	
Draper	1	
Total	49	99.5

Note: 107 men served as constables or deputy constables in this period. The occupations of slightly more than half remain unknown.

Sources: CDA, MISC:182; MIC:8; MIC:3; HAS/B:12/1; MAC:119; MIC:517; MISC:78 and various family and estate papers (see Bibliography, under CALDERDALE DISTRICT ARCHIVES); YAS, MD 225/1/345-395 (engrossed rolls and especially paper drafts); BIHR, CP.H.

Halifax constables were chosen annually at the Michaelmas court leet - two for Halifax township and one for each of the out-townships - and were then sworn at quarter sessions. The basis for eligibility remains unclear. Probably it was restricted to householders. If so it must have been the richer ones. In the township of Halifax itself, where there was the greatest concentration of wealthy families, constables were predominantly drawn from the ranks of the minor gentry,

yeomanry, large-scale cloth merchants, and substantial tradesmen. Occupational information is available on forty-nine of the 107 constables and deputies who held office between 1620 and 1670 (Table 7.5).

The largest single group was made up of gentlemen (more than a fifth). They included men like John Ryall of Halifax and (later) Warley whose role in the parish administration spanned almost three decades. In addition to serving as a Halifax constable, Ryall was at various times between the mid 1630s and the later 1660s churchwarden, overseer, inquest juror, foreman of the quarter sessions grand jury, township sworn man, leet juror (on eight occasions between 1640 and 1667), and juror at the last gibbet trial in 1650.⁶⁵ It is a measure of his comparative wealth that he was one of Halifax township's seventeen subsidymen in 1641 and had the vote in 1654; and it is a measure of his standing in the community that he was in demand as an executor when prominent inhabitants were drawing up their wills.⁶⁶ Hugh Curren of Over Brea in Northowram was another Halifax township constable of gentry status.⁶⁷

65. PRO, KB 9/869, m. 133; 9/870, m. 354; 9/883, m. 258; ASSI 44/2 (inquest on view of the corpse of Nathan Normanton, Summer 1648); CDA, MIC:8/89, 93, 100; 'OLP' 9; YAS, MD 225/1/362/A (paper draft, Halifax township presentments, Michaelmas and Easter); 225/1/366 (Michaelmas), 225/1/376 (Michaelmas and Easter), 225/1/377 (Michaelmas and Easter), 225/1/380 (Easter), 225/1/388 (Michaelmas), 225/1/392 (Easter), (all Halifax leet juries); WYRO, QS 4/4, f. 184; T.W. Hanson, 'The gibbet law book', p. 340; Samuel Midgley, *Halifax and its gibbet law placed in a true light*, p. 59.

66. PRO, E.179/209/363; CDA, 'OLP' 175.

67. YAS, MD 225/1/363 (Halifax township presentments, Michaelmas).

In 1630 he paid a knighthood fine of £10; in 1641 and 1642 he was assessed for subsidies. At around the same time he added to his landholdings by acquiring the manor of Bingley. Shortly afterwards he was appointed by Parliament as one of the nine sequestrators of Halifax vicarage.⁶⁸ He had already risen to prominence in parish affairs during the 1630s when he became one of the workhouse governors.⁶⁹ In the 1630s he also served in various other capacities in parish affairs, as churchwarden, leet juror and township sworn man.⁷⁰

Two other constables to come from the ranks of the parish gentry were John Smithson and John Power. Smithson filled the constable's office in the early 1620s and at around the same time was adding to his property holdings, leasing from Sir Arthur Ingram several horse and fulling mills in Halifax, Northowram and Southowram for a total of £346-10-0 per annum.⁷¹ Thirty years later the same property was leased by Power and his physician brother Henry.⁷²

Constables below the rank of gentleman were still men of considerable fortune and prestige. Abraham Parkinson, for example, was a yeoman who served in the

68. T.W. Hanson, 'Halifax parish church, 1640-1660', p. 56; PRO, E.179/209/363; 179/209/377 (both Northowram).

69. Watson, *History*, p. 600.

70. CDA, MIC:8/33; YAS, MD 225/1/361 (Halifax jury, Easter). Cf. CDA, SH:1/OB/1658; BL, Sloane MSS, 1357, f. 92; WYRO, D 53/5 (contributors to Heath school, 1635).

71. YAS, MD 225/1/352 (Halifax township presentments, Michaelmas); LCA, TW/HX/A:214b,214c, 215.

72. LCA, TW/HX/A:238.

office in 1621-1622.⁷³ He was literate, for several documents have survived bearing his distinctive signature.⁷⁴ He was one of seventeen people assessed for the 1641 lay subsidy, probably as a result of his speculation in freehold property in the 1620s and 1630s.⁷⁵ He acted frequently as witness to land transfers and was named in at least one will as executor.⁷⁶ He was active in parish government between the 1620s and 1650s, serving as leet juror nine times, as churchwarden, overseer, and coroner's juror.⁷⁷ Part of his house still stands, in the King Cross area of Halifax in *Parkinson's Lane*.

Similarly, the tradesmen and manufacturers who served as Halifax township constables were part of the local economic élite. Simeon Binnes, a clothier, George Denton, a chandler, and William Bradshaw and John Bothomley, both chapmen, were all constables who contributed to lay subsidies.⁷⁸

73. CDA, 'OLP' 175.

74. CDA, MIC:8/26; SH:4/T.HX/1636; HAS:337-38; YAS, MD 225/1/355/A (Halifax township presentments (paper draft), Michaelmas).

75. PRO, E.179/209/363; LCA, DB 206/1, f.4.

76. CDA, HAS:338; Watson, *History*, pp. 590-91.

77. YAS, MD 225/1/350-84, *passim* (Halifax leet jury); CDA, MIC:8/26, 100; PRO, KB 9/870, m. 128.

78. The relevant subsidy returns (all for Halifax township) are for 1621 (PRO, E.179/209/323), 1624 (E.179/209/330), 1628 (E.179/209/349 and 360), 1641 (E.179/209/363) and 1642 (E.179/209/377). The constables' names are set out in the manor court rolls (the relevant sections are in the Halifax township presentments at the Michaelmas courts leet): YAS, MD 225/1/359 (Binnes), 225/1/353 (Denton); 225/1/349 (Bothomley); 225/1/356 (Bradshaw). For information on the

TABLE 7.6
Status of Halifax township constables and deputy constables,
1658-1670

<i>Social group</i>	<i>n.</i>	<i>%</i>	<i>% of group in township</i>
'A'	9	23.7	7.2
'B'	20	52.6	22.9
'C'	5	13.1	14.9
'D'	4	10.6	13.3
'E'	0	0	41.7
TOTAL	38	100.0	100.0

NOTES: 1. See Table 3.4 (p. 65) for the definitions behind the 'social groups' used here.
2. All constables and deputies were successfully matched against hearth tax returns.

SOURCES: Constables' names were taken from the manor of Wakefield court leet rolls (YAS, MD 225/1/384-396) and compared with the 1664 hearth tax returns (PRO, E.179/210/393, Halifax township).

The opportunity to quantify some of these impressions of the wealth and status of Halifax constables is provided by taxation returns. Liability to contribute to pre-Civil War subsidies put an individual among the wealthiest 1% of the population. Nineteen of the constables and deputies who served between 1620 and 1642 fell into this category (44.2%). For the later period hearth tax returns provide an index of the constables' comparative wealth. The names of thirty-eight men who served as township constable between 1658 and 1670 can be matched with hearth tax returns (Table 7.6). Of these 23.7% belonged to the richest section of the population - social group 'A',

(n, 78 cont.)

occupations of these men: LCA, TH/HX/A: 127 (Binnes); TH/HX/A:220 (Bradshaw); CDA, 'OLP' 179 (Denton); HAS:337 (Bothomley).

TABLE 7.7
Status of out-township constables and deputy constables,
(Halifax parish), 1658-1670

<i>Social group</i>	<i>n.</i>	<i>%</i>	<i>% of group in township</i>
'A'	6	3.6	1.8
'B'	56	33.5	13.6
'C'	53	31.7	16.6
'D'	52	31.2	34.7
'E'	0	0	33.3
TOTAL	167	100.0	100.0

NOTE: Sixty-five of the men who served as constables in the out-townships could not be matched positively with the hearth tax returns.

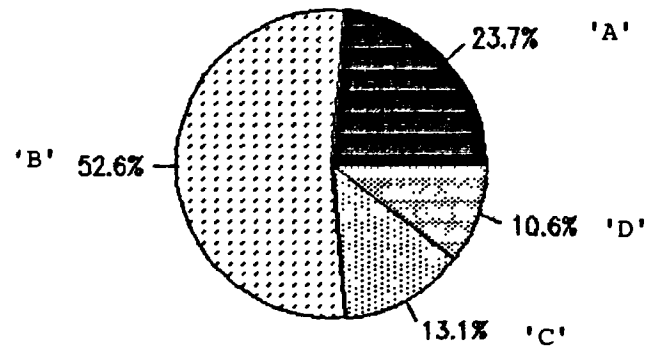
SOURCES: As in Table 7.6.

52.6% to group 'B', 13.1% to 'C' and 10.6% to 'D'. None belonged to the poorest group, 'E'.

There are no taxation returns available against which to measure constables active during the Interregnum. However, fragmentary evidence indicates that the constables who served in the 1640s and 1650s shared the same social status as their precursors and successors. James Holland, for example, was constable in 1648. He was a mercer and on his death in 1651 bequeathed £466-13-4 to his children; he also made over smaller gifts to his friends."

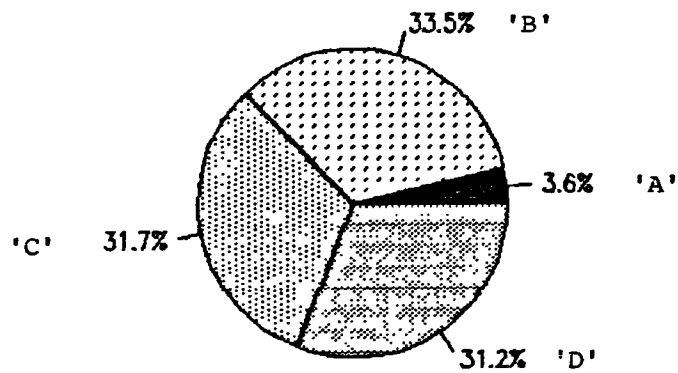
It is important to distinguish between constables from Halifax town and constables from the out-townships. The social profile of the town's constables reflected the fact that the parish's wealth was concentrated there. Table 7.7 shows that in the out-

FIGURE 7.4:
Status of Halifax township constables and deputy constables,
1658-1670



NOTES and SOURCES: As in Table 7.6

FIGURE 7.5:
Status of out-township constables and deputy constables,
1658-1670



NOTES and SOURCES: As in Table 7.6

TABLE 7.8
Status of constables and deputy constables from Shelf
and Heptonstall townships, 1658-1670

HEPTONSTALL

<i>Social group</i>	<i>n.</i>	<i>%</i>	<i>% of group in township</i>
'A'	0	0	1.2
'B'	3	30.0	7.6
'C'	3	30.0	13.7
'D'	4	40.0	49.5
'E'	0	0	28.0
TOTAL	10	100.0	100.0

SHELF

'A'	0	0	1.2
'B'	4	50.0	16.9
'C'	2	25.0	13.3
'D'	2	25.0	33.7
'E'	0	0	34.9
TOTAL	8	100.0	100.0

NOTE: A total of six names (three from each township) could not be matched unambiguously with the hearth tax records.

SOURCES: As in Table 7.6.

townships the top two social groups ('A' and 'B') provided more than two-thirds of the constables between 1658 and 1670. As with the town, the out-township élites exerted a disproportionate influence over the office.

So far the comparison between the two stands up. However, in contrast to the town, a third of out-township constables were drawn from the less affluent group 'C', and another third from the labouring population ('D'). Doubtless this reflects the difficulty in finding enough wealthy men to fill the office. However, even in the poorest townships, like Heptonstall, and the very smallest, like Shelf, the

destitute poor were excluded from office. At Table 7.8 shows the preference was still to recruit constables from as high up the social scale as possible. And although out-township constables on the whole tended to be less wealthy than their Halifax counter-parts they were still influential men within their own communities. Francis Priestley was constable of Sowerby in 1660, and according to a relative, 'no man in the town was so frequently called on as he to arbitrate differences'. He was also 'a very eager, indefatigable reader of books, both divinity, law and history ... having good natural parts and capacity ... he was a pious, religious and conscientious Christian'. His reputation was such that 'no town's business of moment was done without his advice'.⁸⁰

The literacy levels among Halifax constables are further evidence of their high social standing. Of the 107 township constables who served between 1620 and 1670 evidence of subscriptional literacy is available for seventy-four. In respect of two it is ambiguous - they appended both marks and full signatures to different documents. Sixty-four of the remainder (88.9% of those for whom unambiguous evidence is available) were nominate and only eight (11.1%) put marks or initials rather than signatures. Evidence of literacy from two selected out-townships shows only slightly

80. Jonathon Priestley, *Memoirs of the family of the Priestleys*, pp. 6-7; YAS, MD 225/1/386 (Sowerby township presentments, Michaelmas).

inferior levels - in Heptonstall 81.1% were nominate, in Shelf 75.5%.⁸¹

To serve either as constable or churchwarden in Halifax was to take the first steps to more powerful positions. It was the point of entry into parochial government for the sons of the well-to-do. Men were generally in their late twenties or early thirties when appointed, and they could normally expect to serve in a number of other offices once their year as constable was up. Most went on to be churchwarden, overseer, leet juror and, in the later period, vestry officer. Almost three-quarters of Halifax township constables serving between 1620 and 1670 went on to fill at least one other office. The parochial career of John Brearcliffe (born 1618) was typical. Churchwarden in 1648-49, township constable the following year, he became overseer in 1652 and went on to serve as a feoffee in the important Crowther Charity.⁸²

The majority of Halifax constables - both from the town and the out-townships - were part of the local economic élite. The image they present hardly fits that projected by their contemporary and modern critics. However, were they typical of Yorkshire constables as a whole?

81. For the sources from which these figures are derived see sources for Table 7.5.

82. WYRO, D 53/5, August 19, 1618; YAS, MD 225/1/376 (Halifax township presentments, Michaelmas); CDA, MIC:8/100, 106.

Clearly, a parish-by-parish study would be an impossible undertaking, even if all the relevant records were extant. However, there are some indications that the findings from Halifax can be applied to the county. Literacy levels, for example, seem to have been high, at least in the West Riding. Surviving constables' returns to the fourteen articles at the 1678 Lent assizes at York show that of fifty-two petty constables making returns all but two were able to sign their names in full (a 96.4% subscriptional literacy rate).⁸³

The information on constables contained in the assize depositions is disappointingly limited. Very few constables signed or marked depositions. A mere twenty-five constables' depositions taken between 1640 and 1661 bear any indication of subscriptional literacy. Of these, for what it is worth, eleven (44%) were signed in full and the remainder marked or initialled. Occupational information is even more scarce: most magistrates seem to have been satisfied to use 'constable' as the deponent's 'addition'. Only nine occupations are given - one was a gentleman, four were yeomen, two husbandmen, one an innholder, and one a cordwainer.⁸⁴

83. PRO, ASSI 47/20/3. All returns were from the West Riding. A small number of constables put neither signature nor mark on their returns. Returns by high constables have not been included in the figures.

84. The relevant depositions are: PRO, ASSI 45/1/4/31; 45/2/1/147, 159, 269; 45/2/2/15, 26, 32, 51, 83; 45/3/1/28, 29, 47, 54, 63, 73, 143; 45/3/2/1, 35, 160; 45/4/1/27, 28;

However, if the assize records are deficient in this respect, Joan Kent's researches provide confirmation of the Halifax findings. Kent has analysed the wealth, occupation and social status of constables in nine townships in five counties. She found that 'most constables in these townships were drawn from the upper half of society' - the yeomanry and the minor gentry. Even the middling farmers who filled the office were substantial men, the wealthiest in their community.**

The office of constable, then, was dominated by the élite groups. What was the effect of this on the prosecution process? Although constables rarely initiated investigations into property crimes they played an important part once the complainant notified the authorities.** It was generally the constable who conducted searches, stopped suspects or pursued fugitives. The fact that the constable was usually, like the prosecutor, a wealthy man in his community reinforces the impression of a class gulf between offenders and victims. Take, for example, the *dramatis personae* in the following case of aggravated larceny. In December 1650 a barn belonging to Mr. Edmund Griffith in the Level of Hatfield Chase was broken into

(n, 84 cont.)

45/4/2/62, 73; 45/4/3/92; 45/5/1/18-19, 97; 45/5/2/76; 44/5 (document signed by William Sykes, July 24, 1652).

85. *The English village constable*, ch. 4.

86. Assize depositions indicate that constables were involved at some stage in the investigation of property crimes in about a quarter of the cases.

and two cheeses and some tallow stolen. When the theft was discovered Griffith sent a servant to the constable, Edward Fox, a yeoman. Fox and the servant searched the house of a local labourer where the goods were found: élite prosecutor and constable, plebeian offender.⁹⁷ When constables set out on a search they were generally rich men searching poor men's houses for rich men's property, something it is difficult to imagine being lost on either offender or victim.

VI

It would be simplistic to portray élite groups as having a monopoly over the prosecution process. Poor people did bring criminal cases to the courts. But the numbers doing so were small. Instead, it was the gentry, some of whom were prominent magistrates, whom we find repeatedly taking offenders to court for petty thefts. They are especially recognisable as being at the forefront of prosecuting for certain types of offence - wood-stealing and taking corn.

This is not to say that the gentry alone dominated the prosecution process. Yeomen and substantial tradesmen and manufacturers, men of the 'middling sort', made up the bulk of prosecutors in cases of property crime (and in cases of homicide sat on coroners' juries to name the culprit). Through their hold on parish offices, especially that of constable, these men exerted a powerful influence over the local

law enforcement machinery. Their influence is a reminder of their economic strength and independence in relation to the gentry. And it is also a reminder of the distance that separated them from offenders, the overwhelming majority of whom came from the poorest sections of the community. While they were non-gentry, they cannot be considered non-élite: in their communities they were the local ruling class.

The overall picture that emerges is that in mid-seventeenth-century Yorkshire élite groups dominated prosecutorial activity, and that a huge cultural, social and economic gulf divided prosecutors from accused. We move now to the mechanics by which offenders were identified and apprehended and the case against them prepared for trial.

Chapter Eight

Prosecution, detection and evidence-gathering

Prosecuting crime in seventeenth-century England was a largely personal matter; responsibility lay almost entirely with the victim.¹ What influences operated on the victim as he pondered his choices? One of them must have been the potential loss of time that any serious detective effort would necessarily entail. In the absence of a professional police force detection was left to the victim. If the victim's investigations resulted in the identification and capture of a suspect evidence had to be produced. What evidence did prosecutors look for? How was it marshalled? Did they have any understanding of its probative value?² These are the issues this chapter seeks to address. (To a large extent, they have been explored in relation to homicides and infanticides in an earlier chapter.³ The emphasis here is on offences against property.)

1. The victim could lose this control if the culprit was apprehended on suspicion by the watch or the constable, put under restraint, and the goods cried. The victim would then have to prosecute in order to recover the property. See, for example, PRO, ASSI 45/1/5/73.
2. Older commentators thought not. J.F. Stephen, *History of the criminal law of England*, vol. 1, p. 402, wrote: 'The principles of evidence were then so ill understood and the whole method of criminal procedure was so imperfect and superficial, that an amount of injustice frightful to think of must have been inflicted at the assizes and sessions on obscure persons of whom no one ever has heard or will hear.'
3. Above, ch. 5, esp. pp. 183-83; 206-9.

I

Because of the personal nature of prosecution many victims of property crime neglected to report their loss, regardless of the fact that by doing so they left themselves open to indictment for misprision.⁴ The thought of this risk was sufficient to spur on one man who had delayed bringing forward his complaint 'till some of his friends ... advised him that it was dangerous concealing it any longer'.⁵ But despite the vehemence with which legal commentators expounded on its evils, misprision was rarely prosecuted (presumably because of the difficulty of obtaining evidence to support the allegation), and in reality the risks entailed in concealment were slight.⁶

The reasons for not prosecuting varied from person to person. Some victims were mollified by the return of their property; others by the promise of composition. It is significant that compositions are to be found in all types of serious crime including rape, murder, theft and robbery.' While some crimes were viewed as

4. See Edward Hext's letter to Burghley in *Tudor economic documents*, vol. 2, ed. R.H. Tawney and E. Power, pp. 339-46; *William Lambarde and local government: His 'Ephemeris' and twenty-nine charges to juries and commissions*, ed. Conyers Read, p. 71; J.S. Cockburn, 'The nature and incidence of crime in England, 1559-1625', pp. 50-51.
5. PRO, ASSI 45/2/1/117.
6. There were occasional prosecutions: see, for example, WYRO, QS 4/4, ff. 96v-97; PRO, ASSI 42/1, f. 52.
7. PRO, ASSI 45/3/2/163; 45/5/6/18; 45/4/1/154; 45/4/1/168b; 45/4/2/5; 45/4/3/29. For compositions reached in homicides see above, pp. 178-80.

more heinous than others, none was beyond the boundaries of what was considered legitimate for the purposes of extra-judicial settlement. An appeal to the victim's sense of compassion or mercy might also undermine his determination to seek legal remedy, especially if there appeared to be strong mitigating circumstances (if, for example, the culprit was young or female or had a family to support, or had stolen through economic desperation).⁸ And for every compassionate victim there was probably at least one who decided to forgo the law in favour of immediate physical retaliation.⁹ Then there were those, like Edward Procter, a tailor from Well in North Yorkshire, who explained (perhaps disingenuously) that he had not taken evidence of counterfeiting to a JP because he was 'ignorant of the law'.¹⁰

To the various idiosyncracies of the victims must be added the shortcomings in the administrative system that tended to discourage prosecution. The uneven distribution of magistrates meant that some victims had to travel long distances, which sometimes entailed personal danger and always entailed expense, to make their complaint and get a warrant.¹¹ Nor were JPs, once

8. Hext, among others, thought that victims and officers were susceptible to such pleas: *Tudor economic documents*, vol. 2, ed. Tawney and Power, p. 341.

9. PRO, ASSI 45/2/1/269.

10. PRO, ASSI 45/3/1/183.

11. For the distribution of JPs see above, pp. 127-28.

found, always helpful. The experiences of some Yorkshire prosecutors fully justified criticisms of magistrates as 'idle slow-bellies, that abide always at home ... and think it is enough to contemplate justice'.¹² The disruption of the judicial system during the Civil War and its aftermath discouraged some complainants: in response to the magistrate's observation that he had taken more than five years to report a burglary, one victim said simply that 'during the time of the war he durst not'.¹³

Whether in wartime or peacetime an important consideration for anyone contemplating legal action centred on cost. Undertaking a prosecution could be very expensive. In addition to the journey to find a JP there was the cost of the warrant. During the 1650s and 1660s 6d was charged for special warrants to search for stolen goods and for general warrants to apprehend. Warrants to send the hue and cry after robbers and thieves cost a further 6d apiece, while entering recognisances to appear at assizes or sessions cost 2s 6d.¹⁴ Incidental payments to the constable, bailiff and witnesses added to the prosecutor's burdens. These charges, in no sense modest, were well beyond the

12. J.R. Tanner, *Constitutional documents of the reign of James I, 1603-1625*, pp. 20-21. One man claimed that after reporting an offender to a JP he 'got no encouragement' and so let the matter drop: PRO, ASSI 45/3/1/183.

13. PRO, ASSI 45/2/2/117. But see also the comments on p. 137.

14. 'Henry Townshend's "Notes of the office of a justice of the peace", 1661-1663', ed. R. Hunt, p. 96.

resources of large sections of the community; at the very least they would have thrown into question the economic wisdom of bringing a man or woman to court.¹⁵ Take sheep-stealing: the value of the average animal was somewhere between 3s 4d and 7s during this period yet the costs of prosecution (taking into account warrants, recognisances, travelling to and from court to give evidence, paying witnesses' expenses and so forth) could easily exceed that amount.¹⁶ In the case of poultry, bread corn, linen or items of personal clothing the discrepancy between the value of the stolen goods and the cost of legal action was likely to be substantial. No comprehensive record survives from this period to indicate the normal scale of total costs which prosecutors and their witnesses faced. Fragmentary evidence suggests that in complicated cases they could be very heavy. Two men who testified at various stages in the prosecution of a coiner in the later 1640s claimed to have run up costs of £10.¹⁷ A less fantastic sum, though no less onerous for being so, was the 20s spent by Roger Dickenson, a Whitby yeoman, who had to wait seven days in attendance at

15. They would have severely taxed the resources of the labouring population. An agricultural labourer in the south of England earned approximately 1s a day in 1640, a skilled building worker about 1s 5d (wages were probably lower in the north): *The agrarian history of England and Wales*, vol. 4, ed. Joan Thirsk, p. 599. Henry Best of Elmswell paid his harvest workers between 3d and 12d a day: *The farming and memorandum books of Henry Best of Elmswell, 1642*, ed. Donald Woodward, pp. 146-49.

16. For sheep prices see above, pp. 253-54.

17. PRO, ASSI 47/20/1/520.

York in order to give his evidence.¹⁸ The notorious dishonesty of bailiffs, whose duties included conveying prisoners to gaol and serving warrants, helped to keep costs high.¹⁹

Attempts in this period to encourage victims to go to law by offsetting part of the financial burden were too patchy to enjoy any real success.²⁰ However, there is some evidence to suggest that complainants were receiving local assistance. The Sowerby constables' accounts contain entries for costs incurred during the apprehension of offenders, such as the 15s spent on guarding a woman accused of sheep-stealing which appears to have been charged to the township rather than the victim.²¹ Even so, it is unlikely that the Sowerby practice was very widespread and most victims were left to fend for themselves; a fact that was of crucial significance in determining the social profile of prosecutors noted in the previous chapter.

18. PRO, ASSI 45/4/2/1.

19. There were few Yorkshire bailiffs who escaped indictment for extortion or other misdemeanours: see, for example, WYRO, QS 4/3, ff. 3, 24-24v, 51v, 75v, 76, 108v, 117, 150v, 180-80v, 190-90v; 4/4, ff. 42v, 86v, 160, 161; PRO, ASSI 44/6 (indictment of Lawrence Hargreaves, Summer 1654). Cf. J.A. Sharpe, *Crime in seventeenth-century England: A county study*, p. 32.

20. For example, the act of 3 James 1, c. 10, for levying charges for conveying prisoners to gaol.

21. CDA, SPL:143 (accounts of Edward Firth, entry dated December 23-27, 1647). Other sums disbursed by Sowerby constables in the course of apprehending suspects and bringing them to gaol ranged from 3s to 11s 6d: SPL:143 (accounts of Michael Earnshaw, entry dated January 21, 1653; John Crosley, entry dated October 27-30, 1655; John Dickson, entry dated December 10, 1651).

Peter King has described the early-modern system of prosecution as 'a private and negotiable process involving personal confrontation rather than bureaucratic procedure'.²² There can be no doubt that through this 'negotiable process' a very large number of offences slipped quietly past the attention of the authorities owing to victims' unwillingness to get caught up in the potentially expensive tangle of litigation. At the same time there were those who were determined to go to law, and it is with them, and the measures they took, that this chapter is primarily concerned.

II

For some victims the decision to prosecute was bound up with the circumstances of the crime and the arrest. They were more likely to go to court if the offender was caught red-handed. This cut out the potentially time-consuming detective effort needed to track down offenders who avoided immediate capture. If the arrest was made with the assistance of passers-by or in the presence of neighbours a wedge was driven through the privacy of the prosecution process, and while it did not necessarily rule out a composition it did make concealment more risky.²³

22. 'Crime, law and society in Essex, 1740-1820', p. 3.

23. For the kind of pressure that could be exerted by neighbours see Heywood, *Diaries*, vol. 2, pp. 228-31.

TABLE 8.1
Methods by which suspects were identified and
apprehended in cases of larceny, 1640-1661

	n.	%
1. Specific search uncovers suspect with goods	58	14.2
2. General search uncovers suspect with goods	57	14.0
3. Previous bad character leads to suspicion	44	10.8
4. Caught in act	33	8.1
5. Seen driving goods (livestock)	32	7.9
5. Arrested while trying to sell goods	30	7.4
6. Servant/lodger/tabler leaves suddenly after theft	26	6.4
7. Stranger seen in general area	23	5.6
8. Hue and cry	17	4.2
9. Stopped by watch etc.	17	4.2
10. Accomplice/receiver evidence	16	3.9
11. Vagrants searched after theft reported	15	3.9
12. Known person seen in general area	12	2.9
13. Traced through footprints	11	2.7
14. Description of suspect circulated	5	1.2
15. Suspect's belongings found at scene	4	1.0
16. Sudden, unexplained wealth arouses suspicion	4	1.0
17. Overheard talking about crime	2	0.5
18. Boasts about crime to third party who then informs	1	0.2
TOTAL	407	100.1%

- NOTES: 1. Categories are not mutually exclusive. Figures relate to a total of 341 separate cases.
2. In 179 other larceny cases found in the assize depositions no clue as to the method of apprehension was apparent. In some of these the records are incomplete.

SOURCE: PRO, ASSI 45/1/2-45/6/1, 44/1-8, 19 (depositions).

Several of those tried for felony in this period were caught red-handed (Table 8.1).²⁴ But in the majority of cases the identification and capture of the

24. For example, PRO, ASSI 45/5/5/20-21; 45/2/2/197; 45/3/2/3, 178; 45/4/3/111.

culprit required a minimum of detective effort. It is unsurprising that some victims faced with this prospect undertook no more than the most cursory investigative steps. On the other hand, there were those who were prepared to go to great pains. How was this done and with what likelihood of success?

Victims stood the best chance if there were obvious suspects. Servants were the first to be searched when household property went missing, often with success.²⁵ Some servants indicted for stealing from their masters fled soon after the crime had been committed. However, few had the resources to make an effective escape: most simply walked home, taking the stolen goods with them. Knowing their place of origin, masters were able with little difficulty to trace the fugitive and recover their property.²⁶

25. When alehousekeeper Jane Boates of Elland, widow, discovered that a substantial sum of money had vanished she 'searched her servants and her guests' and quickly recovered the money: PRO, ASSI 45/5/2/28. Servants were usually quick to confess when confronted by their masters, making easier the task of establishing a legal case against them. For example, George Lister, servant to John Simpkinson, who was questioned about the theft of money from his master and told the justice that he had been 'moved by the instigation of the devil ... [to] take his master's key lying in an open cupboard ... and ... opening a chest ... took out thereof twenty-five shillings in silver': ASSI 45/5/2/60. Cf. ASSI 45/3/1/207; 45/3/2/169; 45/4/1/78; 45/5/1/6; 45/5/2/49, 79; 45/5/3/16, 38; 44/7 (depositions of George Ingram et al, December 25, 1658).
26. At Shrovetide 1654 Francis Walker hired Mary Speight of Cawood as a servant. After three or four weeks Speight suddenly departed very early one morning. Walker found that a petticoat, waistcoat, hat and some linen was missing. He went to Cawood where he found Speight and his property: PRO, ASSI 45/5/1/108. Cf. ASSI 45/2/2/28-29, 132.

Similarly, travellers and lodgers who attempted to make off with their hosts' goods were often apprehended with comparative ease. Most of these offenders were poor people, too poor to own a horse, and they could be quickly overtaken and captured by a servant sent after them on horseback.²⁷

In these cases no attempt was made to resist arrest, and indeed most arrests in this period were carried out without violent resistance. Soldiers were the exception.²⁸ In addition, there are some references to prolonged and (for those in pursuit) dangerous chases, but in the vast majority of cases the suspect 'came quietly'.²⁹ Unaccompanied women, the depositions show, were able to apprehend fleeing male suspects.³⁰

27. For example, William Varyne deposed that 'upon Thursday night last there lodged at his master's house a man and a woman (whose names he knows not) who went away upon Friday morning. And after they were gone his master, John Wright of Vetherby, told him ... that they had stolen a pair of linen sheets'. Varyne was sent to pursue the couple and soon overtook them. He apprehended the woman and although the man made away he was soon captured: PRO, ASSI 45/3/1/25-26.
28. Two attempts were made to arrest William Loft, a soldier in the garrison at Pontefract suspected of horse-stealing. On the first occasion he shot and injured a man and on the second he drew his sword and wounded Christopher Ellis 'wherewith he is in danger of death': ASSI 45/2/2/92-93. Cf. above, p. 145.
29. For some exceptions see PRO, ASSI 45/2/2/101; 45/4/1/59-63; 45/4/2/23-24; 45/5/2/8, 101-105.
30. For example, Mary Sandwich of Cawood, a widow, pursued the man she believed to have stolen her cow. She found him driving the animal towards Sherburn and apprehended him: PRO, ASSI 45/2/1/174.

From the victim's point of view it was desirable to find the goods before the thief had time to dispose of them. This made it essential to begin a search with the minimum of delay. In law a search required a justice's warrant, but getting one could waste valuable time. Thus many victims took a shortcut by going to the constable who, on his own authority, mounted a search. Martin Wharham, for example, deposed before the magistrate investigating the theft of money and other items from William Baley's house that Baley came to him with the news, 'desiring him this informant, being then constable, to go along with him' to search the house of a suspected man. He accompanied Baley and they found some of the stolen property.³¹ The legal basis of these quick searches is dubious (there is, however, no evidence that they were challenged as being unlawful), they were flexible investigative responses and as such probably enjoyed at least a limited success.

Often searches were undertaken of specific persons or premises on the basis of the victim's suspicions. But there were also 'general searches', that is a 'trawl' of 'suspicious houses' in a neighbourhood.³²

31. PRO, ASSI 45/4/1/76-77. Similarly, William North, constable of Butterwick, deposed that he 'made a search ... very diligently' after a complaint had been brought to him by Thomas Browne charging Ralph Taylor with theft: ASSI 45/4/2/61. For references to warrants to search see ASSI 45/2/2/82; 45/3/1/51b, 211; 45/4/1/12.
32. Monthly searches, provided for under the Elizabethan Poor Laws and designed to discover vagrants and their harbourers, sometimes resulted in stolen property being found. One constable uncovered stolen sheep skins while 'making his

When magistrates ordered a crack-down on particular kinds of crime general searches were used to round up suspects.³³ Those conducting the searches generally had a good idea of the most promising places to begin. Men and women known to be of previous bad character had their homes routinely searched after a theft was reported.³⁴ Alehouses were also liable to be searched owing to their notorious reputation as haunts of thieves and receivers.³⁵

However, there were often additional, more concrete, reasons for picking on particular people and houses. Footprints sometimes allowed victims and their helpers to trace suspects, often over substantial distances.³⁶ On other occasions items of clothing known

(n, 32 cont.)

monthly search ... in discharge of his office and according to ancient custom': ASSI 45/6/2/42. Cf. ASSI 45/2/2/147. Constables' accounts in this period contain numerous references to monthly searches: WYRO, D 16/5/1, ff. 16, 25, 35v-36, 41.

33. For example, during the crack-down on the West Riding coiners and their accomplices in the later 1640s a general search of 'suspicious houses' in Bradford was ordered: PRO, ASSI 45/2/1/130.
34. The house of Henry Kay of Renton was searched after a sheep was stolen apparently because Kay was 'generally suspected for many misdemeanours': PRO, ASSI 45/5/7/50-54. John Foster became the prime suspect in the eyes of John Dun when the latter discovered his horse had been stolen. Foster was, according to Dun, 'known and observed to be a man of idle life ... and spendeth much in ale (as is reported) both at alehouses, and at his own house': ASSI 45/3/2/62.
35. PRO, ASSI 45/3/1/1-2; above, p. 261; Peter Clark, *The English alehouse: A social history, 1200-1830*, pp. 145-47.
36. Thomas Kidd was able to 'trace by the barefoot' of a stolen horse 'five miles in which way the said mare had been led, ridden or driven', and caught up with the offender: PRO, ASSI 45/4/1/155. Stephen Hardesty, constable of Fewston, was able to track thieves who had broken into a barn at Fewston

to have belonged to a certain person, or other possessions, found at the scene of the crime could also narrow the field." Descriptions of suspects observed at the scene of the crime and passed on by witnesses occasionally focused attention on a specific person." Sometimes sudden, unexplained wealth displayed by a neighbour provided clues: it was observed after one theft, for example, that John Stabler, 'a very poor man', had since 'paid his debts in many places and bought himself new clothes' and 'disbursed money amounting to the sum of three or four pounds'. This was enough to prompt the victim of the theft to get the constable to search Stabler's house."

Township officers routinely ordered a search of strangers and vagrants. When William Hopwood of Clifford in the West Riding was told that a nearby barn

(n, 36 cont.)

to Knaresborough (approximately fifteen miles) 'by tracing their footsteps in the snow newly fallen': PRO, ASSI 45/4/1/122.

37. When a walking staff with a silk band tied to it was found outside John Horneby's shop after it had been burgled witnesses remembered having earlier seen it in the possession of a certain Francis Wilson who was apprehended and found to be carrying money stolen from the premises: PRO, ASSI 45/1/5/72. Cf. ASSI 45/5/1/132-34; 45/5/3/63-64.
38. These descriptions could be quite detailed. Thomas Cooke described the man who robbed him as about twenty-one-years-old, of 'middle stature ... little hair of his face', brown hair, wearing a grey coat, black breeches and a black hat: PRO, ASSI 45/6/1/136. Cf. ASSI 45/1/4/65; 45/3/2/90; 45/4/1/17; 45/4/3/114; 45/5/6/47; 45/5/7/27.
39. PRO, ASSI 45/5/3/85. Similarly, Charles Harper was arrested in connection with a theft because he was 'observed to have an unusual plenty of money': ASSI 45/4/3/49.

had been broken into he suspected 'a strange woman calling herself Susanna Lolly [who] was travelling in the town gate at Clifford towards Wetherby with wheat in her apron and a poake on her back', and accordingly 'he did thereupon stay her'.⁴⁰ Strangers and vagrants were such notoriously suspicious figures that constables or members of the watch would attach and search them prior to being notified about any particular crime. Peter Walker, the constable of Kirkdighton, kept under close scrutiny Thomas Dring, 'a wandering person', who came to town 'barefoot and without other necessary apparel'. Dring was later seen to have 'great store of money about him' which he spent on clothes, drink and cards. Walker, 'suspecting he came not well by the money', brought him before a JP to be examined without any prior complaint having been made.⁴¹

Once the crime was made known in the neighbourhood memories could be jogged and useful information passed on to the victim or to the constable. Robert Mendicke, whose horse had been taken from his close, told the examining magistrate that he suspected one Daniel Arnold because 'he is informed that the said Daniel Arnold was seen in the said close on Sunday ... in the evening lurking in the hedge'.⁴² William Worledge of

40. PRO, ASSI 45/4/1/114.

41. PRO, ASSI 45/4/2/9.

42. PRO, ASSI 45/5/3/1.

Anston was able to recover his stolen mare after it was seen 'in the hands of John Wilson by some of the neighbours of Anston'.⁴³ Witnesses in other cases were able to impart information about suspects seen with the goods at different places, or about certain individuals and goods stayed by officers in other townships.⁴⁴

The means by which this type of information was passed on became crucial to investigations that went beyond the immediate locality. John Styles has drawn attention to the impact the rapid spread of provincial newspapers and printing in the eighteenth century had on the dissemination of information about crimes and suspects. Victims were able to advertise their loss in the press or in printed handbills and, Styles argues, this 'crime advertising' enjoyed a measure of relative success.⁴⁵ Although similar advertisements were circulating in mid-seventeenth-century London, throughout provincial England the means of distributing and garnering information about offences and offenders remained until the end of the century haphazard and primitive.⁴⁶ It depended largely on the victim's

43. PRO, ASSI 45/1/5/73-74.

44. For example, PRO, ASSI 45/1/5/78; 45/2/2/164; 45/3/1/46; 45/4/1/17, 107; 45/5/1/26, 80.

45. 'Print and policing: Crime advertising in eighteenth-century provincial England' and 'Sir John Fielding and the problem of criminal investigation in eighteenth-century England'.

46. When John Evelyn was robbed near Blackheath in 1652 he 'got 500 tickets printed and dispersed by an officer of Goldsmith's Hall, and within two days had tidings of all [he] had lost, except my sword ... and some trifles': *The diary of John Evelyn*, vol. 3, ed. E.S. de Beer, pp. 69-71.

capacity and willingness to undertake enquiries: like John Smithson who, after his horse was stolen, 'sent out to enquire throughout all the country for his said mare' and eventually heard 'that there was a man rid on such a like mare as his towards Halifax'.⁴⁷ Other victims reported that chance encounters with people on the road led to vital information being brought to their attention. One man, for example, said he had received information about the whereabouts of his stolen cattle from a breadseller.⁴⁸ Others cried their goods in the marketplace and received helpful information.⁴⁹ Several testified to the effect that they heard from third parties that property similar to their own had been stayed by officers in other townships and put into the hands of the bailiff or the lord of the manor.⁵⁰

Property was sometimes recovered after the thief attempted to sell it to a third party. Many thieves had little luck in turning their crime into profit. Horse-thieves in particular ran high risks. A legal sale could only take place if two witnesses were prepared to

47. PRO, ASSI 45/3/1/38.

48. PRO, ASSI 45/2/2/80.

49. Robert Burne, after his mare was stolen, 'caused her to be cried in several places. After some time he ... had intelligence that such a like mare as he wanted was at Wimbleton': ASSI 45/5/3/43. Cf. above, p. 251; ASSI 45/2/2/80.

50. PRO, ASSI 45/1/5/71; 45/5/1/26-28, 73-74; 45/5/2/1-9; 45/5/3/70; 44/19 (depositions of Charles Shipley et al, December 13, 1647).

vouch for the authenticity of ownership. Some thieves attempted to bribe men to stand as vouchers."⁵¹ Many of those who were unable to produce convincing vouchers were immediately suspected and taken into custody."⁵²

Goods offered at unusually low prices also aroused suspicion and led to arrests. Thomas Witton was unwise enough to offer to sell a horse to Thomas Kente 'for half a crown, which caused the said Thomas Kente to apprehend Thomas Witton'.⁵³ While he was at Bridlington market Robert Widhouse found cattle for sale 'and because the goods did seem to be undervalued they were suspected to be stolen ... Fearing the worst', a local officer thought it advisable to 'take them into his custody till they might be challenged'.⁵⁴

The assize files contain numerous references to offenders being apprehended in markets and fairs trying to sell their stolen goods.⁵⁵ The most promising way to dispose of the goods was to find a dishonest buyer, or at least one who would ask no awkward questions, and

51. PRO, ASSI 45/4/2/6.
52. Charles Towneley, for example, was apprehended at Bradford after he tried to exchange a horse with a local man but failed 'to procure vouchers': PRO, ASSI 45/5/5/67. Cf. ASSI 45/5/1/117; 45/5/3/55. For the regulation of markets see above, pp. 247-48.
53. PRO, ASSI 45/6/2/56.
54. PRO, ASSI 45/1/5/71. Cf. ASSI 45/6/1/48.
55. PRO, ASSI 45/5/1/89; 45/5/2/3, 23, 25; 45/5/5/22, 64. Clumsy attempts to cut or alter the marks from livestock, pewter or linen also aroused suspicions when the thief then tried to sell the goods. John Read was arrested after he had offered for sale a heffer. The potential buyer became suspicious when he saw that 'the near ear had been lately cropped': ASSI 45/5/1/81.

this led offenders to various kinds of shopkeepers and above all to alehousekeepers. Although alehousekeepers enjoyed a notoriously bad reputation, not all were willing to act as receivers and some notified the constable of suspicious goods being offered for sale.⁵⁶ On the other hand, many stolen goods were traced after having been pawned or bought by shopkeepers and alehousekeepers. Once the goods were traced the identity of the actual thief was soon established since receivers were usually willing to name the seller.⁵⁷

The only impersonal means by which crucial information about offenders and offences could be spread was the hue and cry. It was the responsibility of the constable, once notified of the crime, in Sir Thomas Smith's words:

'to raise the parish to aide him and seeke the theefe, and if the theefe be not founde in that parish, to go to the next and raise that Constable, and so still by the Constables of them of the parish one after an other'.⁵⁸

By the mid seventeenth century the hue and cry was working in a modified form. The victim, instead of going straight to the constable, sought a warrant from a magistrate (which cost 6d).⁵⁹ The warrant was brought

56. Isabel French, a Leeds alehousekeeper, sent for the constable when two women whom she 'mistrusted to be thieves' offered to sell her cloth: PRO, ASSI 45/5/3/144.

57. For example, PRO, ASSI 45/1/4/172.

58. *De republica Anglorum*, p. 107.

59. 'Henry Townshend's "Notes of the office of a justice of peace", 1661-63', ed. Hunt, p. 92.

to the constable who raised his neighbours. If the culprit was not found in the parish or township the warrant was passed from constable to constable until either the thief was found or the chase abandoned. J.S. Cockburn has suggested that by this period the hue and cry was largely ineffective.⁶⁰ However, its persistent popularity suggests that it continued to enjoy a measure of success. Constables' accounts from this period contain numerous references to taking up the hue and cry.⁶¹ And, as Table 8.1. shows, it did lead to arrests. Among those apprehended as a result of the hue and cry being raised was Edward Tyler who arrived at the house of George Holling of Cold Kirby asking for food for himself and his horse and for lodging. A neighbour came with the news that 'there was a hue and cry out in the country, whereupon [his] wife went to acquaint the neighbours that there was a stranger at her house, after which some came and took him'.⁶² Tyler undoubtedly stood out as a stranger in the hamlet of Cold Kirby, and this contributed greatly to his arrest. But the hue and cry could also be effective in the larger towns. John Jackson was apprehended at Hull

60. *Calendar of assize records: Introduction*, pp. 89-90.

61. The East Ardsley parish book shows that constables were regularly participating in the hue and cry; seven were recorded in a twelve-month period between 1661 and 1662: WYRO, D 16/5/1, f. 16. The Sowerby constables' accounts also contain numerous references to hues and cries: CDA, SPL:143 (accounts of Michael Earnshaw, 1652-1653, John Crosley, 1655-1656 and *passim*).

62. PRO, ASSI 45/5/4/48.

after stealing a horse some twenty miles away at Lund.⁶³ The hue and cry could travel from neighbouring counties - Nottinghamshire, Lincolnshire and Durham among others - and still have a successful outcome.⁶⁴

III

The success of the hue and cry, and of most detective efforts for that matter, ultimately depended on the willingness of township officers and local people to co-operate with the victim. Some commentators have argued that such co-operation was not always forthcoming, or that it was, at best, grudgingly extended. John Bellamy writes that by 'the fifteenth century there was definite reluctance on the part of local inhabitants to participate' in the hue and cry, while J.S. Cockburn disparages the whole system of early-modern communal peacekeeping as offering 'little hope for the systematic detection and arrest of criminals'.⁶⁵ In Chapter Seven it was argued that

63. PRO, ASSI 45/5/2/49-50.

64. PRO, ASSI 45/1/5/12-14; 45/5/2/36-37, 54-56.

65. *Crime and public order in the later middle ages*, p. 93; *Calendar of assizes records: Introduction*, p. 90. A good example from the assize files of the inadequacies of seventeenth-century communal peacekeeping is the escape of Henry Coats, a suspected horse thief. When Coats's flight was reported to the constable the hapless officer instructed two local men to pursue the fugitive. They refused, saying: 'they would not follow him, let them follow him that had occasion, and so laughing went away': PRO, ASSI 45/1/5/37.

township officers on the whole were more sedulous than many contemporaries believed, more effective than some modern historians are prepared to acknowledge. And there is evidence of co-operation from local people. But before looking at this it is important to make some distinctions between responses to different types of crime.

In the responses to more serious crimes there is often evidence of communal solidarity. This is especially visible after particularly brutal murders. It was common for people to gather together under the aegis of the constable to await his instructions. Witnesses who gave depositions in such cases refer to church bells being tolled and constables 'raising the town' in pursuit of the criminal.⁶⁶ The same records show that there was a distinct willingness to participate among members of all social groups within the community. Five men who assisted in the pursuit and capture of William Keath of Hutton Bushell in the North Riding, wanted for the murder of a local woman, gave their 'additions' as yeoman, husbandman, whitesmith, tailor and labourer - as reasonable a cross-section of any seventeenth-century North Yorkshire community as is likely to be found in such a small random grouping.⁶⁷

We find evidence of the same banding together, the same communal solidarity, in cases of robbery or large-scale theft. To some extent this may be accounted for

66. PRO, ASSI 45/4/3/41; 45/4/2/184.

67. PRO, ASSI 45/5/5/31-40.

by the legal obligation to pay 'robbery money' in the event that the criminal evaded capture: people would obviously have a financial interest in taking action. But undeniably it had a spontaneous side. This is clear from the determination displayed by neighbours to assist victims. When, for example, Anne Huntley returned home one day to find two men stealing from her house, she called on her husband who 'did get his neighbours together' to 'pursue the men'. The thieves, who were armed, threatened their pursuers that they would 'let [their] guts about their heels' rather than yield, were followed several miles onto the moors before being taken."⁶⁸

The men who robbed the Huntley home turned out to be soldiers, and during the 1640s the communal response to law-breaking may well have been strengthened by the perceived threat posed by marching armies. In the early 1640s there are references in the depositions to local people taking communal action - spontaneous rather than planned - to protect their property from soldiers."⁶⁹ In many ways these responses to the military presence foreshadowed the formation of Club associations after the outbreak of war.

68. PRO, ASSI 45/4/1/59-63. Cf. ASSI 45/1/3/25; 45/4/1/122-23; 45/4/2/63. It is worth mentioning that despite their generally appalling reputation for lawlessness, soldiers were sometimes involved in tracking down suspects and bringing them before the authorities. See ASSI 45/1/5/3; 45/2/1/178, 187, 225, 269; 45/2/2/53; 45/3/2/111; 45/5/5/48.

69. For example, at Knapton in 1641 when local inhabitants banded together to arrest soldiers who were stealing sheep from the common field: PRO, ASSI 45/1/3/25.

TABLE 8.2
Additions of male witnesses in property crimes,
taken from assize depositions, 1640-1661

	n.	%
Esquire	1	0.6
Gentleman	7	4.0
Clerk	2	1.2
Yeoman	32	18.4
Husbandman	21	12.1
Servant/steward/apprentice	40	23.1
Labourer	10	5.7
Blacksmith	6	3.4
Tailor	6	3.4
Butcher	5	2.9
Clothier	4	2.3
Innholder*	4	2.3
Draper*	3	1.7
Shoemaker	3	1.7
Tanner*	3	1.7
Cordwainer*	3	1.7
Alehousekeeper	2	1.2
Mercer*	2	1.2
Carpenter	2	1.2
Skinner	2	1.2
Vintner*	2	1.2
Brazier*	1	0.6
Salter	1	
Parchment-maker	1	
Weaver	1	
Locksmith	1	
Glover	1	
Cutler	1	
Grassman	1	
Cooper	1	
Glazier	1	
Goldsmith*	1	
Silversmith*	1	
Clothdresser	1	
TOTAL	173	100.0

NOTE: * denotes wealthier trades (see above, p. 291).

SOURCE: PRO, ASSI 45/1/2-45/6/1; 44/1-8, 19.

Local men and women who were quick to follow suspects or act as witnesses after a particularly threatening or heinous crime might be much less inclined to do so if the crime was of a kind which

enjoyed a measure of popular approval: for instance, breaches of the game laws (which in the 1640s and 1650s could have strong ideological undertones), gleaning and wood-taking (long seen by the poor as 'rights').⁷⁰ Local people might also hesitate before participating in investigations into violent death in certain circumstances: if, for example, local opinion had it that there had been no malice involved.⁷¹

It is difficult to gauge the local response to run-of-the-mill property crimes, the kind that clogged the gaol calendars, since the evidence is so indirect. One thing, however, seems clear: the response varied from social group to social group. Table 8.2 gives the additions of 173 male witnesses in property crime cases as they were recorded on depositions. Always bearing in mind the deficiencies of the sources and the relative smallness of the sample, it is striking that, as with the social profile of property crime prosecutors, the higher social groups - yeomen and above - are represented out of all proportion to their numbers in the community. To these higher social groups might be added men who followed better-off trades - goldsmith, silversmith, mercer, tanner, vintner, innholder and so forth. In addition there were forty men who were servants, stewards or apprentices and who were giving evidence for their masters. This brings the proportion of prosecutors and witnesses in the sample who came

70. See above, pp. 121, 262-67.

71. See above, pp. 178-80.

from the well-to-do classes, or who belonged to the servant class, to more than half. Even this is probably to underestimate their numbers since it disregards those described as clothiers, drapers or cutlers, some of whom may well have been substantial employers. It also leaves out those men who described themselves as labourers and who were giving evidence at the behest of their masters.⁷² Conversely, the number of labourers and unskilled workers, or those belonging to the poorer trades such as tailors and shoemakers, giving evidence on their own behalf, is comparatively small.

It is possible that 'the poorer sort' were excluded by prosecutors out of a preference for well-to-do men as witnesses in the belief that their testimony would carry more weight. On the other hand, the poor may have excluded themselves, perhaps from hostility to the prosecutor and his use of the law, or from sympathy with the offender, his circumstances and plight. There is no direct evidence on this. The important point, however, is that the social profile of witnesses reinforces the impression of a class gulf between victim and accused. Most of those examined by JPs in respect of property offences were poor; against them were ranged men, as prosecutors and witnesses, of considerably higher status.

72. See, for instance, PRO, ASSI 45/3/1/25.

Having marshalled his witnesses, the victim had then to go before a magistrate who conducted a (usually) brief investigation into the complaint in order to assess whether it should proceed any further. It is with this stage of the prosecution process that the final section of this chapter is concerned.

IV

The statutory foundations of the pre-trial investigation were two Marian acts that empowered JPs to take statements of evidence, or depositions, from prosecutors, witnesses and suspects in cases of felony.⁷³ If satisfied that there was a case against a suspect, JPs were obliged, under certain conditions, to grant bail, or, as happened more commonly, to send the accused to gaol by writ of *mittimus* to await trial.⁷⁴ The statutes provided that the 'examinations' of suspects and the 'informations' of witnesses (only the latter were taken on oath) were to be certified to the clerk of assize in time for the trial.⁷⁵ Although JPs

73. 1 & 2 Philip & Mary, c. 13, extended and consolidated by 2 & 3 Philip & Mary, c. 10. For procedure in taking depositions see Michael Dalton, *The countrey justice*, pp. 49-55, 295-312; T.G. Barnes, 'Examination before a justice in the seventeenth century'. Cockburn provides a useful summary of procedure in *Calendar of assize records: Introduction*, pp. 93-100.

74. There were frequent complaints of corruption in the granting of bail. See, for instance, *The Fairfax correspondence*, vol. 2, ed. G. Johnson, pp. 298-99.

75. In cases of petty larcenies and other such 'small felonies' JPs were to certify their depositions to quarter sessions: Dalton, *The countrey justice*, p. 50.

were sometimes amerced for negligence in this field, the Yorkshire records indicate that by the mid seventeenth century most 'working' magistrates were conforming satisfactorily to the statutory requirements.⁷⁶ Their efforts made depositions available in almost all felonies tried at York assizes (as well as many of those heard at quarter sessions) during this period. More than 80% of the names listed in the Lent 1647 calendar, to take a random example, can be matched against depositions, and it may well be that others were certified but have since been lost.⁷⁷

It is worth emphasising that although the Marian statutes did not lay down very precise rules as to the format the depositions should take, they did have an explicitly defined (and rather narrow) aim. They were intended to garner and arrange testimony which, in Dalton's words, 'shall be material to prove the felonie'; that is, in effect, evidence for the prosecution. JPs were not statutorily bound to note evidence in the suspect's favour, nor were magistrates obliged to record the testimony of all witnesses, only

76. See Cockburn, *Calendar of assize records: Introduction*, p. 101, for fines levied on JPs who failed to take examinations or neglected to certify them.

77. The calendar contains the names of only those prisoners actually committed for trial (not those whose bills were not found), a total of eighty-eight: PRO, ASSI 47/20/6, ff.30-36. Only sixteen names could not be matched against depositions. The relevant depositions are in ASSI 45/1/4-45/2/1. Cf. Styles, 'Print and policing', p. 14, who shows that depositions survive for more than three-quarters of horse stealing cases that came to assizes (northern circuit) between 1760 and 1799.

those who produced the suspect."⁷⁸ But by the 1640s it is clear that many JPs were interpreting their duties more broadly. They normally heard evidence from a wider circle of interested parties, including those whose testimony was favourable to the suspect. The prisoner's denials also seem to have been routinely recorded. The amount of detail contained in the depositions (even those relating to relatively trivial larcenies) suggests that JPs' investigations were becoming more extensive, and that they were by this period going beyond the minimum statutory requirements.

The surviving records produced by coroners, who were similarly obliged to take depositions, show that many of them conducted wide-ranging and in-depth investigations to establish the identity of the perpetrator and, for reasons made clear in Chapter Five, the context in which the killing occurred.

By the 1640s, then, the pre-trial investigation by magistrates and coroners was a key part in the prosecution process, and one that was working with a reasonable degree of efficiency. But what ends did investigators have in view? This is an important point, for the depositions and the evidence they contain speak to the priorities and conduct of evidence-gathering. And since they also hint strongly at the standards of legal proof required by the courts

78. *The countrey justice*, p. 49. However, Dalton, p. 300, thought it 'just and right' that JPs should include such evidence 'as goeth to the acquittal or clearing of the prisoner...'.

they also speak (although less directly) to the priorities and nature of the early-modern criminal trial. What kind of evidence was being sought?

Despite the high evidentiary value the courts placed on voluntary confessions, magistrates do not seem to have been primarily concerned with extracting admissions. The reason for this is not entirely clear; indeed, it seems odd given that the statutes enjoined magistrates to quiz suspects 'strictly'.⁷⁹ However, Lambarde provides a clue. According to Lambarde the thinking behind the taking of depositions was not so that the suspect's 'fault ... be wrung out of himself, but rather to be discovered by other means and men'.⁸⁰ Practice undoubtedly varied from magistrate to magistrate, and the nature of the sources (with their variable formats) obscures much of how JPs actually went about interrogating suspects. Nevertheless, there is no evidence of relentless verbal battering by magistrates in response to denials or evasions. Nor is there any indication of oppression during interrogation; prisoners do not seem to have been subjected to physical abuse or personal violence. Instead, it is striking how infrequently confessions were forthcoming (see Table 8.3). It appears that comparatively little effort was made to induce confessions. The case of George Coats, a ten-year-old

79. According to Samaha, 'Hanging for felony: The rule of law in Elizabethan Colchester', p. 778, those being examined by JPs faced a 'gruelling experience'.

80. *Eirenarcha*, p. 208.

accused of having stolen a horse with his uncle, is suggestive. On first being examined Coats denied any involvement in the crime. On the following day the young suspect was again examined (itself an unusual occurrence). This time he made a complete confession and explained his earlier denials by saying:

'Thomas Wilborne of Hamilton advised him ... not to tell of the theft which he ... and his uncle had committed, but desired him ... to conceal it several times by these words, "Sirrah, thou hadst not best confess, wilt thou hang thyself, and thy uncle?"'⁸¹

If it took two days to extract an admission from a ten-year-old boy, how 'strict' can judicial interrogation have been?

In special circumstances the authorities did make greater exertions to get confessions or additional information; further examinations were occasionally ordered subsequent to the prisoner's committal to gaol. In June 1617, for instance, Sir Thomas Wentworth, the West Riding *custos rotulorum*, wrote to a fellow JP, William Cartwright, to bring to his attention 'a fellow in the Castle for horse stealing'. Wentworth asked Cartwright to 'take the paines to send for him; take his examinacon, and try if yow can gett him to confesse any further matter, for his neighboures doe much suspect him for other pilferinges'.⁸² Similarly, James Greenwood, committed to York Castle in November 1659 on

81. PRO, ASSI 45/1/5/35-37.

82. *Wentworth papers, 1597-1628*, ed. J.P. Cooper, p. 92.

suspicion of stealing a horse, was re-examined in March the following year. It seems likely that Greenwood himself had sought the interview, probably by indicating his readiness to be of help in return for consideration at his impending trial. In any event, Greenwood implicated a number of men, including his former master, in a series of crimes against prominent people in the locality."⁸³

However, there was widespread dislike of accomplice evidence and the courts attached little probitive value to it."⁸⁴ This probably discouraged investigators from investing too much energy in trying to induce prisoners to name names. Some prisoners did so, and a few testified in court, but usually the complaint had to be established, as Lambarde directed, 'by other means and men'.⁸⁵ How was information on offenders and offences marshalled and presented, and what were the implications of this recourse to 'other means and men' on the overall process of detection?

83. PRO, ASSI 45/5/6/18-20.

84. Indicated in this case by the verdicts: Greenwood was convicted and hanged, PRO, ASSI 42/1, f. 40, while the bills against those he named (Henry Leigh, Samuel and John Cheetham, and James Heworth) were found *ignoramus*: ASSI 42/1, f. 85.

85. See above, pp. 234-35, for accomplice evidence used against a gang of coiners. Cf. A. Macfarlane, *The justice and the mare's ale*, p. 65. For examples of suspects seeking to blame their accomplices: PRO, ASSI 45/5/1/23; 45/5/3/99.

Magistrates and prosecutors looking for evidence were aided by the handbooks of Lambarde, Dalton and Sheppard which directed their attention to what was considered acceptable by the courts as 'sufficient proofs'. On the whole these were commonsensical, discriminating and conformed to a sophisticated and fairly consistent set of legal rules. However, there were some important exceptions to these standards: they occur most often in allegations of murder and witchcraft.

It was stressed in Chapter Five that a major difficulty in investigating murder was the inability of contemporary medical science to provide a definitive basis on which to establish the cause of death, especially where there were no visible wounds or injuries, or after a prolonged period of 'languishing' by the victim.** This deficiency was aggravated by the virtual non-existence of any forensic knowledge to link a suspect to the crime and turn suspicion into legal proof. There was thus an evidential vacuum which had to be filled. The Scientific Revolution notwithstanding, it was filled by 'magical' phenomena which were offered, and accepted, as valid proofs in law.

One of the most popular and persistent of these 'magical' phenomena was predicated on the belief that a corpse would bleed afresh when touched by, or when

86. Above, esp. pp. 182-85.

brought into the presence of, the murderer. It had a long and respectable history.⁸⁷ Early in the seventeenth century it received authoritative endorsement from Dalton who advised JPs to watch for such bleeding as definitive proof of guilt.⁸⁸ The validity of the phenomenon was probed later in the century by Yorkshireman John Webster. In *The displaying of supposed witchcraft* (published in 1677 and dedicated to West Riding JPs), Webster discounted witchcraft beliefs as the product of 'mere deluded fancy, envious mind, ignorance and superstition', but concluded that since stories of 'the bleeding or curentation of the bodies of those that have been murthered ... upon premeditated purpose' (there were no known instances of bleeding in cases of manslaughter or death by accident) had been confirmed by so many 'learned and credible authors ... a man might almost be accounted an Infidel not to give credit to them'.⁸⁹

Despite the impressive array of authorities prepared to attest to the evidential weight of bleeding corpses, there is only one recorded instance of a bleeding corpse being produced as evidence in this period. The relevant papers are to be found in the

87. Reginald Scot and Francis Bacon were among those who lent credence to the authenticity of bleeding corpses: see K. Thomas, *Religion and the decline of magic*, pp. 261-62.

88. Dalton, *The countrey justice*, p. 11.

89. *The displaying of supposed witchcraft*, pp. 302-11.

assize files of 1658, and they point up the functional side of 'magical' proofs.

Sometime between Whit Sunday and middle of June 1658 an inquisition, headed not by a coroner but by a relatively junior member of the commission of the peace, Henry Tagett, was held after the death of Elizabeth Pearson of Burstwick (near Hull).⁹⁰ The inquisition declared that Pearson's death was due to 'visitation of God', and the body was duly buried. The only record of Tagett's investigation into Pearson's death comes from a summary of the inquisition's finding entered into the gaol book by the clerk of assize at the meeting of the court in July 1658, so we do not know what witnesses were heard or what evidence adduced. However, not long after the burial the body was exhumed (on whose authority remains unknown). Statements of evidence were taken by a new and more senior justice, Hugh Bethell, and included the testimony of three men who claimed to have been present in the churchyard when the body was dug up. John Horne deposed that he opened the coffin and stood by as a woman parted the sheet to uncover Elizabeth's face. Horne stated that he saw no blood at this point but that 'Samuel Pearson [Elizabeth's husband] was called upon to lay his hand upon her, and so soon as he had touched her he did see the blood popple in her mouth

90. The reason for the absence of the coroner and the legal basis on which Tagett headed the inquisition are unclear and may have influenced the subsequent turn of events. The inquisition's verdict was recorded in the gaol book: PRO, ASSI 42/1, f. 19.

and some run down at the left side'. Horne's evidence was corroborated by Edward Rayner and John Wade. The latter deposed that he saw Samuel Pearson touch 'the corpse ... upon her cheek with two of his fingers and one of his fingers touched her pinner, and this informant did see a drop of blood upon her pinner where he took his finger off'."

Why had the body been exhumed and the ordeal ordered after Tagett's inquisition had returned its verdict of 'visitation by God'? The depositions taken by Bethell make clear that there were lingering doubts about the original verdict. Suspicion fixed on Samuel Pearson because it was widely known that he had on several occasions given his wife severe beatings, and after one of these beatings Elizabeth complained to neighbours saying that she feared she would die. Four witnesses testified before Bethell to this effect. The bleeding corpse evidence seems to have been used here to compensate for the inability of contemporary medicine to provide the forensic proof to establish what the neighbours strongly suspected, and may have been used, or manipulated, to persuade Bethell to reopen the case. But although it was sufficient to have Pearson indicted for murder, it did not secure a conviction, a possible indicator that 'magical' proofs, though they still provided the basis for charges, were

by this time losing credibility in the courts."²

In allegations of witchcraft similar proofs were produced. It was a crime whose very nature made recourse to supernatural phenomena predictable. In the words of Dalton, the works of witches were 'workes of darkenesse, and no witnesses present with them to accuse them'. To remedy this Dalton listed under fifteen headings the proofs to be used 'for their better discovery'. The surviving assize depositions record twenty-eight persons (all but two were women) examined by JPs as suspected witches. The depositions show that JPs were familiar with Dalton's list, and they followed his recommendation:

'for the better riddance of these Witches, there must bee good care had ... in their examinations taken by the Justices ... That the same be set downe directly in the materiall points'.³

JPs took lengthy statements of evidence in witchcraft cases and pursued lines of investigation and questioning designed to obtain the accepted proofs. The most common of the proofs referred to by the depositions was the existence of a secret teat or mark.⁴ Also mentioned are sightings of familiars and

92. PRO, ASSI 42/1, f. 15 (Pearson heads the list of those found not guilty at the Summer 1658 assizes).

93. *The countrey justice*, pp. 277-79.

94. Alice Purston of Rodwell deposed that she was charged by the constable to search Katherine Earle, a suspected witch, and found 'a wart which she had under her ear ... and between her thighs ... a little lump of blackish flesh about the

claims that the witch appeared to her victim during his convulsions or fits."

Taken with 'bleeding corpse' evidence the survival of witchcraft beliefs and the assiduous gathering of the 'proofs' recommended by legal commentators caution against taking too far the view that a completely rational approach to evidence prevailed in this period. The continued popularity of cunning folk, who, it was believed, could point out the most promising places to search for stolen property, reinforces this point." However, in the great majority of criminal complaints coming before the courts - involving both crimes against the person and crimes against property - prosecutors and witnesses sought to prove their case by producing solid evidence. It was, on the whole, discerning, reasonably systematic, and logical. It was also at times almost forensic. All these qualities are

(n. 94 cont.)

length of half and inch': PRO, ASSI 45/5/2/30-31. The four women sent to search Mary Armitage found 'upon her right shoulder a little hole about a quarter of an inch deep': ASSI 45/5/5/1-3.

95. John Johnson, an eleven-year-old servant of a south Yorkshire yeoman, deposed that while in bouts of extreme pain a local woman, Mary Waide, appeared to him sitting in the chimney corner or on the chimney top: PRO, ASSI 45/6/1/69. For sightings of familiars see ASSI 45/5/1/87; 45/5/3/132.
96. One 'cunning man' in the Otley region was said to have been particularly successful. He showed people 'by signs in chalk and pointing with his hand' where their property could be found. His clients agreed they had been directed 'very truly': PRO, ASSI 45/4/2/70. For other cases indicating the persistent popularity of cunning folk to victims of theft see ASSI 45/3/2/97.

clearly visible in the deposition of Richard Keld, who in February 1647 testified in connection with the theft of a sheep from fields near the North Riding village of Ayton. Keld:

'with others ... traced the foot of a man with a staff and a dog with him in the snow ... and it did appear by the trace that the dog ... was hounded at [some] sheep and had taken one of them ... And ... he did further follow the trace of the said man and the said dog about a mile near unto the house of Michael Taylor at Limber Hill whom he doth suspect to be the man that stole the said sheep [because he] with others did precisely, as near as possibly they could, take measure of the length and breadth of the said foot in the snow. And afterward, coming with the constable to search the house of ... Michael Taylor, and taking the shoes, which the said Michael Taylor did acknowledge to be his own wearing shoes, and trying them with the said measure, they did agree in breadth and in width'."

As Table 8.3 indicates, the evidence offered in support of most complaints of property crime was fairly solid." The column headed *Admission to possession* refers to those cases in which the suspect acknowledged during the examination that he had the stolen property among his belongings (well over half)." The next column indicates that stolen property was recovered by those searching the suspect's body or home at the time

97. PRO, ASSI 45/2/1/248.

98. See C. Herrup, 'New shoes and mutton pies: Investigative responses to theft in seventeenth-century East Sussex', for further discussion of this view.

99. The admissions were not necessarily confessions of guilt. Most claimed to have come innocently into possession. Jeffrey Tompson, for example, found with four stolen cattle, said that on his travels he met a man 'who hired him to carry four oxen towards Doncaster, but he doth not know his name nor never saw him before, but denyeth he stole the said oxen': PRO, ASSI 45/2/2/146.

TABLE 8.3
Evidence produced at pre-trial investigations
(selected categories of simple larceny)

<i>Type of goods</i>	<i>Total cases</i>	<i>admission to possession</i>	<i>possession on arrest</i>	<i>previous possession</i>	<i>conf- ession</i>	<i>other</i>
Horses	(56)	34	30	10	9	13
Cattle	(23)	14	7	7	2	7
Cloth	(17)	10	11	1	3	5
Money	(13)	3	5	2	6	7
Sheep	(10)	7	7	3	0	4
TOTAL	(119)	68	60	23	20	38
%		(57.1)	(50.4)	(19.3)	(16.8)	(31.9)

NOTE: 1. Categories are not mutually exclusive.

SOURCE: PRO, ASSI 45/4/1-45/6/1.

of arrest. This kind of evidence was available against half of those in the sample. Less frequent were those cases, in the third column, in which witnesses deposed to the effect that they had seen the suspect in possession at some point between the commission of the crime and the arrest. Equally infrequent are confessions. The *Other* column contains a few second-hand confessions, that is an admission allegedly made to a third party later repeated before the magistrate and recorded. Also under this heading are observations about the suspect's general circumstances, moral worth, reputation, his inability to provide an alibi or account for his movements; none of these occurred often enough to warrant separate tabulation. There were few suspects against whom evidence from at least one of the categories shown in Table 8.3 was not available, and several were faced with an assortment of incriminating facts.

Although the kind of evidence offered against those accused of serious crimes against the person has already been touched upon, it is worth pointing out that it was of the same general standard as that produced against property crime suspects. As made clear in Chapter Five most unlawful killings took place in public places. Consequently, there were normally several eye-witnesses to testify as to the identity of the culprit and the surrounding circumstances. When William Renton died after receiving a wound while drinking in an alehouse, three local people were able to give first-hand accounts of how he came by his death.¹⁰⁰ Often these accounts were supplemented by the statements of dying victims which were repeated before the magistrate.¹⁰¹

Eye-witnesses appeared less frequently to testify about fatal domestic violence, but neighbours were often in a position to provide background about previous ill-treatment.¹⁰² Prosecutions for premeditated killings by their very nature presented problems of evidence: eye-witnesses were rarely available, and the difficulties surrounding forensic evidence have been explored at length. But this is not to say that

100. PRO, ASSI 45/5/4/1-3; 44/7 (indictment of John Atkinson, Summer 1657).

101. Francis Jackson, for example, survived just long enough after what proved to be a fatal encounter with one Webster to crawl into an alehouse and acquaint drinkers with the name of his assailant: PRO, ASSI 45/1/3/50.

102. For example, PRO, ASSI 45/1/4/13; 45/2/1/35-37; 45/3/1/203b; 44/3 (depositions of Jane Hickson et al, March 9, 1649).

evidence for the prosecution was entirely lacking. Murder investigations that went to trial generally had a strong evidential basis. Local people were often in a position to identify likely suspects.¹⁰³ Their evidence was usually circumstantial, but no less suggestive for that. There were no eye-witnesses to the murder of Dorothy and Robert Haskins, for example, but the investigating magistrate was able to build up a fairly convincing case against the primary suspect, John Scaife. The pair were murdered on their journey homewards to Berkshire from north Yorkshire. Four people deposed that Scaife had been present when the Haskins had received £5. One of these witnesses added that a search of Scaife's mother's house soon after the murders had uncovered two blood-stained hats. Another told of how the suspect had vanished from the neighbourhood shortly after the crime. A third testified that she had seen Scaife follow the couple as they set off home.¹⁰⁴

Allegations of homicide, then, like those of larceny, rarely lacked substantial supporting evidence.

V

There are three things worth emphasising about the process of prosecution, detection and evidence-gathering. First, it shows that the system of communal

103. For example, PRO, ASSI 45/1/4/66.

104. PRO, ASSI 45/5/4/41-43; above, p. 192.

peace keeping was by no means the hopelessly unserviceable machine that some commentators believe. It continued to offer those victims who were prepared to undertake some detective effort reasonable chances of success.

Success was at least partly contingent on the efficiency of parish officers who, it has been argued, were generally diligent and conscientious. It was also contingent on the willingness of local people to respond positively to calls for assistance. Assistance was most readily forthcoming in serious cases - murder, robbery, large-scale theft - or if soldiers were involved. But - the second point to stress - in ordinary property crimes it seems to have been largely confined to the higher social groups. Witnesses, like prosecutors and constables, were drawn predominantly from élite groups in the community.

The final point concerns the approach to the evidence. When victims initiated their complaint they generally recognised the need for hard facts and sought to obtain them. This should have boosted the chances of a conviction on trial. But, as the following review of the issues thrown up by the trial will suggest, juries were interested in much more than the evidence linking the accused to the crime.

Chapter Nine

Trial, verdict and judgment

Trial by jury, more than any other element in the early-modern system of criminal justice, attracted glowing tribute. 'The Trial by a Jury of Twelve Men,' wrote Hale, 'as it is settled here in this Kingdom, seems to be the best Trial in the World.'¹ To Blackstone its importance transcended that of the merely institutional: it was 'the principal bulwark of our liberties ... a privilege of the highest and most beneficial order'.² Historians have, on the whole, been less sanguine: J.S. Cockburn, for one, while pointing out that many of its aspects worked to the accused's advantage, has characterised the early-modern criminal trial as 'nasty, brutish, and essentially short'.³ Critics argue that the principles of evidence were not properly applied, or even understood. They argue that the filters and safeguards designed to protect the innocent did not operate efficiently; juries, extolled by commentators like Hale and Blackstone as impartial finders of the truth, were, they say, dominated by judges and did little more than rubber-stamp decisions

1. *The history of the common law of England*, p. 160.

2. *Commentaries on the laws of England*, vol. 3, p. 350.

3. *A history of English assizes, 1558-1714*, p. 109.

made by the bench. Critics also point to the many disadvantages facing the accused: most defendants, emerging from gaols where they may have been kept for months on end in appalling conditions, were ill-equipped to face the ordeal ahead of them: they were poor, uneducated, lacking in the resources at the command of their (usually better-off) accusers, and without benefit of legal advice. Above all, critics spotlight the fearful and disproportionate sanctions handed down to men and women condemned for what are now considered trivial offences.⁴

Attempts to fathom exactly what went on in court run into obvious difficulties. Three centuries after the events it is simply impossible to reconstruct many of the features that went to shape the conduct and outcomes of criminal trials. The appearance, demeanour and speech of the participants - which would have had important subjective influences - all of these are invisible to the historian, while the lack of reports of trial proceedings in this period muddy the already murky waters. The available evidence is indirect and there are serious problems of interpretation. Some of what follows is therefore necessarily speculative; much of it is open to the criticism that the conclusions are based on inadequate or imperfect source material. However, we are not bereft of material: some impressions can be drawn; it is possible to describe something of what happened and to provide possible explanations for why it happened.

I

Criminal trials at quarter sessions and assizes, conducted in this period without lawyers, followed the same basic pattern. In bare outline it was this: at the start of the proceedings the clerk read out the relevant commissions and the sheriff's return of the lists of jurors. Panels of grand and petty jurors were then drawn up and sworn. Next, the clerk read out the calendar of prisoners, which he had earlier compiled with the assistance of the gaoler.⁴ There followed a charge to the jurors from the judge or the chairman of the bench, and at assizes there was also a sermon. The grand jury, anywhere between twelve and twenty-three strong, then retired to consider the bills of indictment. If it rejected a bill the foreman of the jury wrote on it 'we know it not' or *ignoramus*. If a bill was endorsed (at least twelve jurors had to be 'thoroughly persuaded of the truth of an indictment' for this to happen) the foreman wrote 'true bill' or *billa vera*. Prisoners who had the charges against them rejected by the grand jury were freed by proclamation along with those whose cases were dismissed by the judges (without being submitted to the grand jury) because of insufficient evidence. Prisoners against

4. These views can be found in Donald Veall, *The popular movement for law reform*; Robert Zaller, 'The debate on capital punishment during the English Revolution'.
5. This is the impression given by an order made by assize judges in 1651: PRO, ASSI 47/20/6/742.

whom a true bill was found were returned for trial by petty jury. At York assizes in the 1640s and 1650s they were tried in batches of up to ten or twelve (sometimes more), the case against individual prisoners taking at most a few minutes, the testimony being kept brief and the issues simple. It is unclear whether the jury retired to consider its verdicts, probably not. In any event, there was little time for prolonged deliberation, even in more complex cases. Petty jury verdicts had to be unanimous and, if convicted, a prisoner had judgment, or sentence, passed on him by the justices (at quarter sessions) and by the judge (at assizes), usually at the end of the proceedings. Unless an order was made to respite judgment, those condemned to death were executed almost immediately.⁶

Much depended on the probity of the grand and petty jurors; but these were frequently criticised as being venal and ignorant.⁷ Judges, when delivering their charge, tried to give jurors a rudimentary grounding in the law and the principles of evidence.⁸

6. This summary is based on *The office of the clerk of assize, ... Together with the office of the clerk of the peace; Quarter sessions order book, 1642-1649*, ed. B.C. Redwood; Blackstone, *Commentaries on the laws of England*, book 4, pp. 302-5; Cockburn, *Calendar of assize records: Introduction*, chs. 8-9; Sir Thomas Smith, *De republica Anglorum*, pp. 110-16.
7. William Lambarde and local government: *His 'Ephemeris' and twenty-nine charges to juries and commissions*, ed. Conyers Read, pp. 59, 74-75; P.J.R. King, 'Crime, law and society in Essex', p. 312.
8. See Serjeant Thorpe's Charge; as it was delivered to the Grand jury at York assizes, the Twentieth of March, 1648 ..., esp. pp. 7-19.

Jurors were also reminded of the paramount need for impartiality, a theme consistently pursued in assize sermons. John Shaw, who preached regularly at York assizes in the 1650s, warned against corruption, favouritism and reprisal. The only legitimate consideration was, said Shaw, 'Is he guilty or not guilty?'⁹ The question of legal guilt or innocence, of course, in theory, ought to have been the sole determinant of trial outcomes. But was it? To answer this it is first necessary to look closer at juries themselves, to discuss their composition, their priorities, the extent of their independence, and the nature of their relationship with the bench.

II

The qualification for service on the seventeenth-century grand jury was not precisely formulated.¹⁰ In Yorkshire during the 1640s and 1650s it seems that the rule stipulating that jurymen be 40s freeholders was not always rigorously applied, owing (probably) to the unpopularity of service and attempts to evade it.¹¹ But

9. John Shaw, *Britannia redivita* ..., pp. 391, 399.

10. Grand jurors were supposed to be 'honest and legal' men, 'the most sufficient freeholders in the county': *The office of the clerk of assize, ... Together with the office of the clerk of the peace*, pp. 16-17, 29-30.

11. See the petitions requesting release from jury service in PRO, ASSI 47/20/7. These suggest the requirement was the 40s freehold, but the occasional presentment of the high sheriff for returning 'insufficient' jurymen indicates that the qualification was property to the value of £4 a year. These presentments also suggest difficulties in finding suitable

TABLE 9.1
Status of jurymen in
two undated lists of assize grand jurors

	First list	Second list		
	n.	n.	total	%
Baronet	4	6	10	10.5
Knight	2	2	4	4.2
Esquire	34	27	61	64.2
Gentleman	8	11	19	20.0
Not given	0	1	1	1.0
TOTAL	48	47	95	99.9

SOURCE: PRO, ASSI 47/20/7/469-70v.

while some jurymen fell short of the property requirement, most grand juries were impressive bodies, composed of wealthy county gentlemen, substantial freeholders and well-to-do artisans and tradesmen.¹² Although assize grand jurors were generally of higher status than their quarter sessions counterparts, any rigid distinction between the two is artificial. Some cross-over took place. John Green, Abraham Boyes and John Buckle, for example, served on both assize and quarter sessions grand juries.¹³

The two lists shown in Table 9.1 emphasise the élite composition of the 'eyes and spies of the

(n, 11 cont.)

men to serve: ASSI 44/3 (two presentments of Sir William St. Quentin, Summer 1649). Cf. Cockburn, *Calendar of assize records: Introduction*, pp. 46-47.

12. Information of assize juries (petty and grand) is sparse. A few lists have survived, usually as wrappers for rolls of indictments, and in addition to being in poor physical condition rarely carry details of occupation, and sometimes not even of residence.
13. YCA, F.7, f. 415; F.8, ff. 234; PRO, ASSI 44/9 (jury list, Lent 1662).

country', as Lambarde termed them.¹⁴ These are assize grand jury lists, and together the ten baronets and four knights who sat on them made up 15% of the total; the remainder were esquires and gentlemen (although for some jurors the designation 'gentleman' may have been extended as a courtesy). These lists probably date from the 1660s or early 1670s. As such they differ from their Interregnum counterparts in that the upper gentry element was strengthened in the post-Restoration grand jury.¹⁵ Another list, again undated, but almost certainly from the 1650s, carries occupational information on forty-three men: in contrast to the later panels, the most elevated members were mere gentlemen, of whom there were fourteen (a third); six were merchants and the remainder were affluent tradesmen and artisans: mercers, innholders, tanners, grocers and so forth.¹⁶ Although still a body of well-to-do men, it was markedly inferior to the post-Restoration panels bristling with baronets and knights. The significance of the alteration in the grand jury's composition will be considered below.

The names of West Riding quarter sessions grand jurymen have been preserved in the indictment books, but unfortunately not their occupations. However, by

14. *William Lambarde and local government*, ed. Read, p. 73.

15. J.M. Beattie, *Crime and the courts in England, 1660-1800*, pp. 320-24. Cf. the Earl of Newcastle's advice to Charles II, which contains recommendations on juries, printed in *A catalogue of letters and other historical documents exhibited in the library at Welbeck*, pp. 198-99.

16. PRO, ASSI 47/20/7/80v-83.

TABLE 9.2
Quarter sessions grand jurymen and subsidy returns

<i>Township</i>	<i>Total</i>	<i>subsidymen</i>
Darrington	5	2
Kippax	7	0
Barnsley	12	7
Ackworth	11	4
Pudsey	3	0
Methley	6	2
Brayton	8	4
Darton	2	1
Denby	6	4
Rawmarsh	2	1
Tickhill	7	6
Wortley	1	1
Dodworth	7	7
Wakefield	14	7
Whixley	8	5
Kirkhammerton	6	2
Greenhammerton	4	2
Spofforth	4	1
Dacre	4	1
Farnham	6	5
Minskip	6	2
Marton	9	4
TOTAL	138	68 (49.3%)

SOURCES: WYRO, QS 4/1-8; PRO, E.179/209/363-84; E.179/210/387-391; E.179/262/8, 10.

comparing their names to those recorded in the lay subsidy rolls of the 1640s and 1660s it is possible to get some insight into their relative standing in the community. (Being assessed for the subsidy probably put a man into the wealthiest 1-2% of the community.) The names of 138 quarter sessions grand jurymen from twenty-two West Riding townships who served between 1638 and 1665 were checked against subsidy rolls." The results are set out in Table 9.2: they show that sixty-eight, or almost half, were also subsidymen at one time

17. In the following wapentakes: Agbrigg, Claro, Barkston Ash, Morley, Osgoldcross, Skyrack, Staincross, Strafforth-Tickhill. No rolls were available for Staincliffe and Ewcross.

or another. When considering the value of this comparison it is worth bearing in mind that no taxation records of this kind are available for the 1650s, and it may well be that some men who served during the Interregnum were either dead by the 1660s (when subsidies were again levied) or had moved elsewhere, and are thus absent from the rolls. If anything, the figures may under-estimate the number of grand jurymen who were also subsidymen.

The respectable backgrounds of West Riding grand jurymen is matched by the occupational information on their counterparts at York quarter sessions. Thirteen panels from the period 1650 to 1688 carry occupational designations. They show that jurymen followed a wide range of trades and professions but that the bulk were drawn from what G.C.F. Forster identifies as the city's richest groups: merchants, leather-workers (tanners and cordwainers) and victuallers (bakers, butchers, vintners, innholders and grocers).¹⁸ Further evidence of their relative wealth comes from poor relief assessments: men like Robert Calvert, Henry Spinke, Wilfrid Lazenby, Abraham Boyes and Richard Justice were all York quarter sessions grand jurymen who were among the comparatively small number of persons liable to contribute to the relief of the city's poor.¹⁹

18. The panels are listed in YCA, F.7-8; VCH, *The City of York*, p. 167.

19. YCA, F.7, f. 402; E.73, f. 42 (Calvert); F.7, f. 285; E.73, f. 39 (Spinke); F.8, f. 235; E.73, f. 48 (Lazenby); F.8, f. 234; E.73, f. 49 (Boyes); F.7, f. 503; E.73, f. 42 (Justice).

At both assizes and quarter sessions it was usual for some men to serve repeatedly: six, seven or eight times in as many years was not unusual at West Riding quarter sessions.²⁰ William Gill of Righton, holds the record for this particular court: he sat on twenty-two juries between 1638 and 1665.²¹ This phenomenon of repeated service has been remarked on by students of the grand jury.²² One obvious consequence was that there was an experienced core at every meeting of the court. This probably helped proceedings to move along smoothly and at a fairly brisk pace. It also meant that grand juries were reasonably well equipped to deal with problems of evidence. It was the presence of experienced men, rather than the hasty lessons in the judges' charge, that enabled jurors to sift the pros and cons in the allegations they heard. Assize grand juries were aided in this by the inclusion of magistrates on panels. By the 1640s, if not before, it was normal at York assizes to have at least one magistrate in each grand jury panel (he invariably acted as foreman), and in 1658 judges ordered that in future three justices should serve on each jury.²³

20. The fragmentary nature of the evidence does not allow quantification of this: jurors' domiciles are not consistently recorded, making identification difficult.

21. WYRO, QS 4/1-8, *passim*.

22. J.S. Morrill, *The Cheshire grand jury*; Cockburn, *Calendar of assize records: Introduction*, pp. 50-51; King, 'Crime, law and society in Essex', pp. 317-19; J. Langbein, 'The criminal trial before the lawyers', pp. 276-77; Beattie, *Crime and the courts in England*, p. 327.

23. PRO, ASSI 42/1, ff. 20-22.

In theory grand jurors were supposed to retire to consider their verdicts on the basis of the depositions certified by JPs and forwarded with the bills of indictment. But can we be certain that the theory operated in practice? Was the grand jury's examination of the evidence anything more than cursory? The court files do not contain direct testimony on this, but the internal archival evidence suggests that the depositions were being used. The Northern Circuit assize files are still partially unsorted, and among them are rolls of indictments interspersed with depositions.²⁴ These survive only in cases the grand jury rejected or if the accused was found 'at large' (*extra in felony*). The probable explanation for this is that when the bills of indictment were forwarded the relevant depositions went with them. The grand jury then read the depositions (or heard them read out), and considered the charges. Since there was no further use for the bills or the depositions if the charges were rejected, they were simply rolled up and put to one side and they have survived in this form to this day.

Furthermore, at York assizes it was the practice of the foreman of the grand jury to write on the bill, once the verdict had been settled, either *billa vera* or *ignoramus*. The foreman then put his signature below the verdict. The names of witnesses were also recorded, and these appear in the same hand. Presumably, these were the witnesses whose depositions were read by the grand

24. For example, PRO, ASSI 44/4 (*ignoramus* roll, Lent 1651).

jury or who possibly had been heard in person. On a number of true bills, but not on those marked *ignoramus*, are names of other witnesses (usually marked *testes*) entered in a different hand. It seems likely that this second set of witnesses was noted by the clerk and consisted of those heard at the trial itself, but not by the grand jury. These two points suggest that grand juries had available, and were using, the depositions.

It may be that this is to stretch the archival evidence too far. Press of time may have caused inconsistencies in the clerks' work, while even the barest exposure to early-modern legal records cautions against placing too much emphasis on alterations in style and format. Still, when taken with the occasional letters addressed to the grand jury containing evidence for the prosecution which are to be found among the assize files, it strongly suggests that grand juries were taking pains to consider the written evidence of the depositions.²⁵

On the basis of the written evidence, West Riding quarter sessions grand juries endorsed just less than three-quarters of all cases of property crime coming before them (serious offences against the person were

25. For example, PRO, ASSI 44/19 (Lent 1648). This is an unsigned letter 'to the gentlemen of the grand jury' and pinned to the indictment of a suspected coiner, Thomas Garthwaite or Garfoote. In it the author brings to the jury's attention details of how he apprehended the suspect and directs them to other potential witnesses, suggesting that one Langstaffe be 'strictly examined', a possible indication that grand juries were hearing testimony as well as reading the depositions.

rarely heard by this court). In doing so they do not appear to have been influenced by the nature of the crime, as Table 9.3 suggests. To take two offences at opposite ends of the scale in terms of their seriousness: horse-stealing and the theft of food. The *ignoramus* rate for both was roughly the same, 31.8% for the former, 31.3% for the latter. The *ignoramus* rate for aggravated larceny is almost the same as for simple larceny, but perhaps not too much should be made of this owing to the small number of aggravated larcenies that were heard at quarter sessions.

The assize *ignoramus* files are extremely patchy, precluding quantitative analysis. However, the surviving evidence points in much the same direction as that from quarter sessions. Owing to the nature of the assize material, however, it is impossible to break the figures down by offence as in the case of quarter sessions.²⁶

The depositions suggest that grand juries paid careful attention to the strengths and weaknesses of the cases they heard. Although they cannot provide the full background to individual cases, the depositions were the basic material from which the grand jury worked, and are thus reasonable pointers to the state of the evidence. They indicate that weak cases were being weeded out efficiently. Four categories stand out

26. Between 1658 and 1665, a period for which the gaol book gives brief notes on *ignoramus* bills, 157 persons accused of felony had bills against them rejected: 30.9% of the total: PRO, ASSI 42/1, *passim*.

TABLE 9.3
Grand jury verdicts at West Riding quarter sessions

Offence	n. T.B.	n. IG	% T.B.	% IG
<i>(Simple larceny)</i>				
Horses	58	27	68.2	31.8
Cattle	43	22	66.2	33.8
Sheep	179	79	69.4	30.6
Food	92	42	68.7	31.3
Household goods	185	40	82.2	17.8
Cloth	64	22	74.4	25.6
Poultry	40	10	80.0	20.0
Other livestock	8	2	80.0	20.0
Money	35	18	66.0	34.0
Tools	40	9	81.6	18.4
Unspecified/ Miscellaneous	182	74	71.1	28.9
(sub total)	926	345	72.9	27.1
<i>(Aggravated larceny)</i>				
Robbery	9	4	69.2	30.8
Breaking	30	7	81.1	18.9
Burglary	11	7	61.1	38.9
(sub total)	50	18	73.5	26.5
Coining	1	1	50.0	50.0
Arson	3	3	50.0	50.0
Miscellaneous Property crime	28	7	80.0	20.0
TOTAL	1008	374	72.9	27.1

NOTE: Includes only years in which *ignoramus* bills are complete: 1647-1657, 1660-1665.

SOURCE: WYRO, QS 4/2-8.

as the kind of cases the grand jury commonly rejected. In line with the strictures of Coke and Hale, they refused to endorse bills of indictment alleging murder if no body had been found.²⁷ Thus an assize grand jury dismissed the charge against James Baddilaw for the

27. Hale, *The history of the pleas of the crown*, vol. 2, p. 290.

alleged murder of James Freeman. The main prosecution witness, George Wright, could say no more than that the last time Freeman was seen was in Baddilaw's company, that Freeman had been in good health, and that Baddilaw was bound to pay Freeman a yearly sum of money for life. For these reasons, the witness said he believed that Freeman, who was missing, had been murdered. Although the bill of indictment states that Baddilaw murdered Freeman by holding him under water, there is nothing in the papers to indicate that a body had been recovered, and there is no coroner's inquest among them.²⁸ Similarly, George and Mary Cutforth, charged with murdering an unknown man whose body was never found, had a bill against them rejected.²⁹

Grand juries were also alert to signals of malicious prosecution, especially when there were also signs of a previous dispute between the parties. For example, they rejected an allegation of horse-stealing against Henry Browne brought by his neighbour and tenant Abraham Mallinson. Mallinson deposed to the effect that he had bought the horse in question from Browne and that later Browne stole it. Browne's examination revealed that the two men were involved in a quarrel over a sum of £6 or £7 which Browne claimed was owed to him by Mallinson for outstanding rent.³⁰

28. PRO, ASSI 44/4 (Lent 1651; deposition of George Wright, November 23 [?], 1650).

29. PRO, ASSI 45/5/4/11-15; ASSI 44/7 (Lent 1657).

30. PRO, ASSI 44/4 (indictment of Henry Browne, Lent 1651, and depositions of Abraham Mallinson et al, February 19, 1651).

Juries were also suspicious if victims delayed reporting. Among the cases they rejected in this category was an allegation of rape which was not made until eighteen months after the incident, and one of burglary, also made some eighteen months later.³¹

Although cases could proceed to trial without prosecution witnesses appearing in person (the depositions were then read out), grand juries were reluctant to endorse bills in such circumstances. At the Lent 1651 assizes they dismissed charges of horse-stealing, sheep-stealing, murder and assault because no one came forward to testify.³²

The approach to the evidence was not always so careful or discriminating. Despite warnings contained in handbooks, charges alleging the theft of goods from an unknown person were routinely proceeded on at both assizes and quarter sessions.³³ Although the circumstances surrounding the arrest of the suspect were often suspicious, the possibility of a miscarriage of justice arising from this kind of prosecution was clearly present; it was insufficient, however, to deter

31. PRO, ASSI 44/4 (indictment of Christopher Shackleton, Lent 1651, and depositions of Martha Redman et al, February 22, 1651); 44/6 (indictment of Ralph Leake, Lent 1656, and depositions of William Fenton et al, October 31, 1655).
32. PRO, ASSI 44/4 (indictments of Thomas Pridion, Peter Arthington, Elizabeth Cooke and Mathew Dew).
33. Hale, *The history of the pleas of the crown*, p. 290, wrote that he 'would never convict any person for stealing the goods *cujusdam ignoti* merely because he would not give an account how he came by them, unless there were due proof made, that a felony was committed of these goods.'

juries from endorsing the charges.³⁴

Owing to the lack of specific information, as well as the poor survival of *ignoramus* files, it is difficult to show a connection between verdicts and the possible subjective influences at work on the grand jury - for example, the reputation or status of the parties involved, or the state of a particular crime in the county at the time.³⁵ However, these undoubtedly played a role. We gain better insights into them from the next stage of the proceedings - the trial in front of the petty jury.

III

There is less information available about petty jurors than about grand jurors. There are only a handful of relevant lists scattered among the court archives, most of which carry only the jurors' names. However, many of

34. WYRO, QS 4/5, f. 153; PRO, ASSI 44/5 (indictment of William Crabtree, Lent 1652); 44/6 (indictment of Robert Walbanck, Summer 1654).
35. It has been suggested, for example, that women were more leniently treated: Beattie, *Crime and the courts in England*, pp. 403-4. The Yorkshire material shows only a slightly higher *ignoramus* rate in respect of female offenders: at quarter sessions 28.2% of female property offenders had their bills rejected; the figure for male offenders was 26.3%. Without more detailed information on the status of individual prosecutors and accused it is hard to say whether on the whole grand juries treated bills brought by elite prosecutors more favourably; it is clear, however, that such bills were not always endorsed. Among the bills dismissed were those preferred by leading gentry and magistrates: PRO, ASSI 42/1, ff. 41, 52; ASSI 45/5/6/18-20; WYRO, QS 4/3, f. 184; 4/4, f. 17.

these names are familiar, for it seems that grand and petty jurors, at quarter sessions at least, were interchangeable.³⁶ Ten petty jurors who sat at the Michaelmas 1651 meeting of quarter sessions at Knaresborough served at one time or another as grand jurors; two of them - Robert Pickard and Henry Pullein served in both capacities at the same session.³⁷ Although it is not possible to plot patterns of service, it is clear that, as with grand juries, petty juries had an experienced core. Henry Pullein, in addition to serving on several grand juries, also sat on at least four petty juries between 1651 and 1657; his colleague Peter Brownrigg on three.³⁸ Other men, like Arthur Hanson of Halifax, already had wide experience of serving on juries of different kinds before acting as a trial juror in 1648; he sat on both

36. Unlike in eighteenth-century Essex where petty jurors were generally of lower social origins than grand jurors: King, 'Crime, law and society in eighteenth-century Essex', pp. 312-15.

37. The petty jury, M.1651:	First appearance on grand jury	
William Atkinson of Righton		Ep. 1652
Peter Brownrigg of Ribston		none
John Hargreaves of Ribston		none
Henry Spincke of Scotton		Ep. 1649
Thomas Greaves of Leathley		M. 1650
Francis Benson of Usburn		Ep. 1653
Peter Benson of Usburn		M. 1659
Robert Pickhard of Farnham		M. 1651
Henry Pullein of Ribston		M. 1651
Thomas Dawson of Whixley		Ep. 1648
Brian Marshall of Greenhammerton		M. 1651
Oswald Langwith of Greenhammerton		Ep. 1653

NOTE: Ep. = Epiphany; M. = Michaelmas.

SOURCE: WYRO, QS 4/2-4/8.

38. WYRO, QS 4/3, f. 152; 4/4, ff. 10v, 95, 143, 250.

inquest and leet juries between 1640 and 1647. Hanson was one of Halifax's leading citizens during the Interregnum, a subsidyman and a voter in the 1654 parliamentary election.³⁹ He typifies the kind of substantial freeholder from which both grand and petty jurors were drawn in this period.

Petty juries at quarter sessions acquitted almost half those arraigned for felony; they returned partial verdicts against two-fifths of accused, and guilty as charged verdicts against only 10% (Table 9.4). The acquittal rate is only slightly lower at assizes but the guilty as charged rate is rather higher (Table 9.5). Jury verdicts were, in theory, determined by the evidence as it was adduced during the course of the trial. But how far, in fact, were juries guided by the evidence?

From the eighteenth century onwards the admissibility of evidence was hedged about with certain exclusionary rules designed to safeguard the accused's right to a fair trial. Few of these rules operated in the seventeenth century. Although the grand jury tended to weed out the more doubtful cases, some, founded on what today would be considered unacceptable evidence, slipped through. Hearsay was freely admitted, as was any evidence of the prisoner's bad character (normally this meant a previous conviction or court appearance, but it could also refer to the prisoner's general

39. WYRO, QS 4/2, f. 50v; PRO, KB 9/842, m. 228; YAS, MD 225/1/366 (Brighouse leet jury); E.179/209/393, 377 (Hipperholme-Brighouse township).

TABLE 9.4
Petty jury verdicts at West Riding quarter sessions, 1638-1665
(Property crime)

	<i>Total</i>	<i>Not Guilty</i>		<i>Guilty as charged</i>		<i>Partial Verdict</i>	
		<i>n.</i>	<i>%</i>	<i>n.</i>	<i>%</i>	<i>n.</i>	<i>%</i>
<i>(Simple larceny)</i>							
Horses	41	38	92.7	2	4.9	1	2.4
Cattle	45	27	60.0	8	17.8	10	22.2
Sheep	273	124	45.4	28	10.3	121	44.3
Household goods	265	105	39.6	29	10.9	131	49.4
Cloth	96	40	41.7	4	4.2	52	54.2
Money	45	22	48.9	14	31.1	9	20.0
Food	170	90	52.9	17	10.0	63	37.1
Tools	49	26	53.1	4	8.2	19	38.7
Poultry	73	26	35.6	10	13.7	37	50.7
Swine	10	5	50.0	1	10.0	4	40.0
Miscellaneous	128	83	64.8	5	3.9	40	31.2
<i>(sub total)</i>	1195	586	49.0	122	10.2	487	40.7
<i>(Aggravated larceny)</i>							
Burglary	6	3	50.0	1	16.7	2	33.3
Robbery	9	9	100.0	0	0	0	0
Breaking	39	23	59.0	1	2.6	15	38.5
<i>(sub total)</i>	54	35	64.8	2	3.7	17	31.5
Miscellaneous	4	2	50.0	2	50.0	0	0
TOTAL	1253	623	49.7	126	10.0	504	40.2

- NOTES:** 1. Only known verdicts have been counted. This accounts for the discrepancy between the totals in this table and in Table 6.3.
2. Other notes as in Tables 6.1 and 6.3.

SOURCE: As in Table 6.1.

TABLE 9.5
Petty jury verdicts at selected York assizes,
1641-1658

		Not Guilty		Guilty as charged		Partial Verdict	
	Total	n.	%	n.	%	n.	%
<i>(Simple larceny)</i>							
Horses	195	115	59.0	78	40.0	2	1.0
Cattle	118	59	50.0	59	50.0	0	0
Sheep	99	31	31.3	27	27.3	41	41.4
Household goods	70	22	31.4	20	28.6	28	40.0
Cloth	67	19	28.4	20	29.8	28	41.8
Money	36	21	58.3	10	27.8	5	13.9
Food	28	10	35.7	6	21.4	12	42.9
Tools	3	1	33.3	1	33.3	1	33.3
Poultry	2	0	0	1	50.0	1	50.0
Swine	3	1	33.3	1	33.3	1	33.3
Miscellaneous	20	6	30.0	10	50.0	4	20.0
<i>(sub total)</i>	641	285	44.5	233	36.3	123	19.2
<i>(Aggravated larceny)</i>							
Burglary	91	52	57.1	15	16.5	24	26.4
Robbery	55	29	52.7	24	43.6	2	3.6
Breaking	27	12	44.4	8	29.6	7	25.9
<i>(sub total)</i>	173	93	53.8	47	27.2	33	19.1
Coining	55	41	74.5	14	25.4	0	0
Miscellaneous	4	2	50.0	2	50.0	0	0
<i>(Property crime subtotal)</i>	873	421	48.2	296	33.9	156	17.9

OFFENCES AGAINST THE PERSON

Murder	90	36	40.0	23	25.6	31	34.4
Manslaughter	34	21	61.8	9	26.5	4	11.8
Infanticide	27	12	44.4	15	55.6	0	0
(subtotal)	151	73	48.3	47	31.1	31	20.5
TOTAL	1024	494	48.2	343	33.5	187	18.3

- NOTES: 1. Only known verdicts have been counted. This accounts for the discrepancy between the totals in this table and in Table 6.4.
2. The 'calendars' given in *Criminal chronology of York Castle* (York, 1867), ed. William Knipe, have been discounted. After checking with surviving seventeenth-century assize records, the only possible verdict is that Knipe's work is largely, or completely, an invention.
3. Other notes as in Tables 6.2 and 6.4.

SOURCE: As in Table 6.2.

reputation in the community). The testimony of minors was allowed; and accomplices were also heard if they had anything to add to the prosecution case.⁴⁰ On the whole, however, the evidence brought in support of felony allegations was solid, at least on the basis of the depositions.⁴¹

But can the standard of evidence found in the depositions be used as a reliable index of that produced at the trial? Unfortunately, there are no trial records to enable comparisons to be made, and in their absence obvious objections arise to using depositions in this way. Clearly, changes could occur in the interval between the pre-trial investigation and the trial itself. In the intervening period, anything from a few days to several months, the prosecutor could find more witnesses, or he could lose existing ones. The slant of the testimony might be redirected, or completely turned around, to suit new circumstances: for instance, if the prosecutor was persuaded, perhaps after a composition, to withdrawn or modify testimony.⁴² The prisoner could also use his time awaiting trial to improvise a new defence, or strengthen an old one. It may be that the depositions

40. Baker, 'Criminal courts and procedure at common law', pp. 38-40; Cockburn, *Calendar of assize records: Introduction*, pp. 103, 106-8; Beattie, *Crime and the courts in England*, pp. 340-52, 362-76.

41. See above, pp. 357-61.

42. See Richard Gough, *The history of Myddle*, ed. D.G. Hey, p. 237, for a good example of a composition resulting in the withdrawal of evidence.

do not give a sufficiently full picture of the strengths of the defence case as they were to emerge during the trial, although the prisoner's capacity to garner defence witnesses from the confines of York Castle must have been limited.

The form in which the testimony was delivered at the two stages in the process also differed. At the pre-trial investigation, testimony, elicited by a series of questions and answers, was laboriously recorded by the justice or his clerk. Even the shortest depositions must have taken several minutes to note down, allowing some pause for reflection, alteration and clarification. Trials, on the other hand, were conducted at breakneck speed, and were characterised by rapid three-way exchanges between the bench, prosecutor and prisoner. Some of the more subtle, but pertinent, points set down in the depositions might well have been swept away in the velocity of the proceedings.

However, it is doubtful whether this happened very often. The issue in most prosecutions was straightforward. The case against John Hudson, as it appears from the depositions, illustrates this. Hudson was charged with stealing three sheep, the property of Thomas Cooke who deposed that they were stolen from his grounds and that he was told they were later found in Hudson's possession. Thomas Lancaster, a prosecution witness, deposed that he saw Hudson drive the sheep in question into a neighbour's (Mrs. Kaye) yard. Hudson, in his version of events, claimed that the sheep 'run

on the street before him ... and so into Mrs. Kaye's yard where they were stayed'.⁴³ The issue could hardly be more clearcut. Either the jury believed Hudson's defence that the sheep went of their own accord 'before him', or they believed Lancaster who claimed to have seen Hudson drive the sheep. The allegations and counter-allegations might be put in different ways, but the core of the complaint at the trial was probably almost identical to that put during the taking of the depositions.

It is also worth stressing that one aim of the Marian legislation which provided for taking depositions and binding over witnesses and prosecutors was to make sure that they repeated their testimony at the trial. It is plain, to judge from the complaints on this point, that the statutes were not entirely successful in their aim. But since depositions were available in most trials for felony in this period judges and magistrates could check to see whether prosecutors were being consistent, which must have acted as a disincentive to at least some of those who were thinking about modifying their evidence.

A final point is that the Marian statutes allowed for depositions to be read at the trial if the witness could not be produced. Despite the grand jury's reluctance to sanction this, it is clear from the records that they were sometimes used in this way, both

43. PRO, ASSI 45/5/7/44-46. Hudson was convicted of petty larceny and whipped: ASSI 42/1, f. 40.

at quarter sessions and assizes, and in several cases the depositions were the only evidence heard by the petty jury.⁴⁴

Thus, while they cannot say very much about the manner in which the evidence was presented at the trial, and are in no sense satisfactory substitutes for detailed trial reports, the depositions do provide a useful indicator about the nature of the evidence heard by the jury. They suggest that the evidence was generally of a very high order; and that all but a handful of those arraigned were correctly accused: that is to say that most prisoners had done what it was alleged they had done. How can the high acquittal rate be squared with this?

IV

One way in which the court might be persuaded to look more favourably on the accused was if the prisoner succeeded in marshalling support from his neighbours. Prisoners' letters and petitions on their behalf are scattered among the Northern Circuit files. They tend to stress two points: that the accused enjoyed a good reputation and the trust of his neighbours, and had previously led a blameless life. Thus more than 200 neighbours signed a petition on behalf of Mary

44. For example, WYRO, QS 4/1 (indictment of Rosamund Wright, Summer 1638, Rotherham sessions; Dorothy Foxcroft, Summer 1638, Wakefield sessions); John Clayton, *Reports and pleas of assises at Yorke*, p. 94; PRO, ASSI 45/1/3/47.

Hickington, a suspected witch, to say that she and her husband 'did behave themselves honestly and innocently'. Colonel Christopher Legard, a JP and soldier for Parliament, lent his voice to the petition, writing to say that Hickington lived 'honestly and faithfully ... and ... behaved herself as became her sex, being not suspected to be guilty of this foul crime whereof she was of late accused'.⁴⁵ Similarly, more than twenty neighbours of Ralph Leake, indicted for burglary, wrote to say that he was honest and had never been 'accused of any such crime as this'. The signatories included two constables and a churchwarden.⁴⁶

But the number of prisoners producing such testimony was small. Beyond making a formal denial at the start of the proceedings most did little else to defend themselves; they had to wait passively for the jury to decide. Fortunately for them it seems that, despite the lack of exclusionary rules, if there were any remaining doubts about the evidence after the grand jury had examined it the trial jury was likely to acquit. This occurred regardless of the seriousness with which the crime was viewed. One highwayman, who boasted of his activities and claimed to have 'left the south upon such occasions' and to have been involved in three robberies in the north, was, along with his comrade, imprisoned but later freed 'because they could

45. PRO, ASSI 47/20/1/512-13.

46. PRO, ASSI 47/20/1/38-39.

prove nothing against them'.⁴⁷ Even when the prisoner's guilt was a matter of public knowledge, acquittals followed if the evidence was in some way lacking. William Rowen, whom the York quarter sessions archives record as 'suspected of evil behaviour and known to have stolen a silver spoon', was nevertheless ordered to be 'released from his fetters' as there was no evidence against him.⁴⁸

The thinness of the prosecution case was only one of the jury's concerns. They were prepared to overlook even the most compelling evidence of guilt. For instance, juries frequently rejected confessions obtained during the pre-trial examination (and as a matter of course retracted by the accused at the trial).⁴⁹ Charles Harper, accused of stealing more than £4, confessed during his examination that 'he did go into the house of Henry Towse ... and likewise into the parlour and he saw some money lying on the chest lid, and he took it, and a piece of bread'; he was nevertheless found not guilty.⁵⁰ Likewise, John Wilson, who confessed 'he took a skewed mare about the six and twentieth day of May last past' which he rode from Anston to Worksop where he was apprehended, was acquitted despite the fact that he had earlier escaped

47. PRO, ASSI 45/6/1/51.

48. YCA, F.7, f. 439.

49. Smith, *De republica Anglorum*, p. 112.

50. PRO, ASSI 45/4/3/49; 44/5 (indictment of Charles Harper, Lent 1654).

from custody, itself a felony and taken in law as evidence of guilt.⁵¹ Examples like these could be multiplied, but one last confession demonstrates the capacity and willingness of petty juries to overlook strong prosecution evidence. In September 1640 Dorothy Grayson of Ferrybridge, widow, gave a statement to a magistrate following the murder of her son, Michael. It is worth recording in full:

'upon Friday last between nine and ten of the clock in the morning Michael Grayson her youngest son about the age of five years, came to her this examinant and asked some victuals of her to eat. And she having no victuals at that time to give unto him, casting her eye about espied a knife under the end of a table and took up the same and cut the throat of the said Michael Grayson her son, having no other quarrel unto him, as this examinant confesseth, but only that she had no victuals at that time to give him, but saith that she is heartily sorry for the said fact and wisheth with all her heart it were undone, and further confesseth not.'⁵²

Although we cannot be sure about exactly how the case against Dorothy Grayson was presented at her trial, it is highly improbable that this confession was not made known to the jury. Yet Grayson was acquitted.⁵³ It is significant that the jury exercised this option, outright acquittal, when it had others, certainly more justifiable in law, at its disposal. For example, it could have convicted her of manslaughter, leaving open the possibility of a non-capital sentence, or found her *non compos mentis*, which would have saved

51. PRO, ASSI 45/1/5/73; 47/20/6/34v.

52. PRO, ASSI 45/1/2/9.

53. PRO, ASSI 47/20/6/734v.

her from the gallows.

It was not just confessions that juries set aside. In larceny cases they acquitted even when the prisoner was found in possession of the stolen goods and was unable to offer a convincing explanation for how they came to be there. Consider Francis Wilson's acquittal on burglary charges at the Lent 1647 assizes. The facts of the case, as they were recorded in the depositions, show that the shop of John Horneby of Snaith, mercer, had been broken into and more than £9 stolen. A hue and cry was raised and Wilson apprehended. When searched he was found to be carrying a sum of 'marked money', including a thirteen groat piece 'dimpled on both sides', which Horneby identified as his. Horneby and his brother testified that they had seen Wilson earlier in the day in the vicinity of the shop, and that he had been carrying a walking staff with a silk band tied to it. This was found outside the shop where it had been broken open. Wilson acknowledged that the staff was his and that he had left it outside the shop. In his defence he said that as he had been walking past the shop at about eleven o'clock at night a boy, unknown to him, emerged from the premises. The boy dropped a purse containing Horneby's money which Wilson said he innocently picked up.⁵⁴ This strong presumptive evidence of guilt was nevertheless rejected by the jury and Wilson went free. Again, examples like these could be multiplied. It is true that the full story behind

54. PRO, ASSI 45/1/5/72; 47/20/6/32v.

them, and the manner in which they were prosecuted at the trial, cannot be conveyed by the depositions. Perhaps Wilson was able to mount a more convincing defence at his trial. But the sheer number of acquittals suggests that trials in this period were not primarily about legal guilt or innocence. Petty juries were taking into account other factors besides the state of the evidence. Before examining these, however, it must be pointed out that juries could also manipulate the evidence to convict, especially in respect of two groups of offenders.

'Outsiders', those not resident in the county and usually vagrants or itinerant workers, often faced hostility in court. The Northern Circuit assize files identify 'outsiders' on indictments by describing them as 'of York Castle', which is probably the early-modern equivalent of the modern 'of no fixed abode'.⁵⁵ As Table 9.6 shows, where verdicts at assizes were concerned 'outsiders' came off badly compared to the 'average' offender: the acquittal rate was 10% lower than average, the partial verdict rate 4% higher, and the guilty as charged rate 5% higher.

In general, then, the courts seem to have adopted a tougher attitude to 'outsiders'. But they were not inflexible on this point; they sometimes extended the benefit of a very slim doubt. In the sample of 'outsiders' are several habitual offenders. Their

55. For example, Mary Clarke, described on her indictment as of York Castle, and on her deposition as of Hexham in Northumberland: PRO, ASSI 44/3 (Summer 1649); 45/3/1/33-35.

TABLE 9.6
Verdicts in relation to 'Outsiders'
at selected York assizes, 1641-1658

<i>Crime</i>	<i>Not Guilty</i>		<i>Guilty as Charged</i>		<i>Partial Verdict</i>	
	<i>n.</i>	<i>%</i>	<i>n.</i>	<i>%</i>	<i>n.</i>	<i>%</i>
SIMPLE LARCENY						
Horses	6	28.6	15	71.4	0	0
Cattle	1	20.0	4	80.0	0	0
Sheep	0	0	1	100.0	0	0
Household goods	3	21.4	4	28.6	7	50.0
Cloth	2	16.7	21	16.7	8	66.6
Money	4	100.0	0	0	0	0
Food	0	0	2	66.7	1	33.3
Other	4	66.7	2	33.3	0	0
(sub total)	20	30.3	30	45.5	15	24.2
AGGRAVATED LARCENY						
Breaking	0	0	0	0	2	100.0
Burglary	10	50.0	5	25.0	5	25.0
Robbery	8	61.5	5	38.5	0	0
(sub total)	18	51.4	10	28.6	5	14.3
TOTAL	38	37.6	40	39.6	23	22.8

NOTE: Known verdicts only.

SOURCE: PRO, ASSI 44/1-8, 19.

crimes were of a very minor nature, committed without violence and involving the theft of goods valued at a few shillings. Elizabeth Davison, originally from Witton Gilbert in Durham, and her son James, were vagrants who made between them seven separate appearances at York assizes between 1656 and 1658 charged variously with stealing clothes and household goods and burglary. They first went on trial in 1656, indicted for stealing clothes. James was convicted of petty larceny and whipped; his mother was convicted and allowed clergy. Within a year Elizabeth was back in court, accused of two burglaries. She was convicted of

the lesser offence of simple larceny and, contrary to statute, branded a second time. Eight months later the two were again indicted, this time for burglary; both were acquitted. Less than six months after that they were once more before the court. This proved to be James's last appearance: he was convicted and executed. His mother was also convicted, sentenced to be hanged but, pleading pregnancy, had judgment respited and was later pardoned.⁵⁶ The Davisons, although they eventually exhausted the court's patience, were probably luckier than most other 'outsiders'. But their many escapes provide a useful corrective to the view that the courts were uniformly harsh in their treatment of vagrants.

The courts showed a distinct lack of sympathy for soldiers indicted for felony. Disorderly soldiers were the scourge of the county for most of the period under review, and the hatred and contempt in which they were held by the population was reflected in the treatment military offenders were accorded by the courts. Table 9.7 shows the verdicts handed down to soldiers tried for various felonies at York assizes (the only court for which records survive to identify military felons). The figures show that the conviction rate was substantially higher than that accorded civilian offenders at the same court. This may be coincidence,

56. PRO, ASSI 45/5/3/27-29; 45/5/4/16-19; 45/5/5/12-13; 44/7 (three indictments of James Davison, Summer 1656, Lent 1658 and Summer 1658; five indictments of Elizabeth Davison, Summer 1656, Summer 1657, Lent 1658, Summer 1658); 42/1, ff. 3, 15, 28, 41, 52.

TABLE 9.7
Verdicts in relation to soldiers
tried at selected York assizes, 1641-1658

<i>Crime</i>	<i>Not Guilty</i>		<i>Guilty as Charged</i>		<i>Partial Verdict</i>	
	<i>n.</i>	<i>%</i>	<i>n.</i>	<i>%</i>	<i>n.</i>	<i>%</i>
SIMPLE LARCENY						
Horses	8	25.8	23	74.2	0	0
Sheep	0	0	11	78.6	3	21.4
Other	7	19.4	22	61.1	7	19.4
(sub total)	15	18.5	56	69.1	10	12.3
AGGRAVATED LARCENY						
Robbery	0	0	17	94.4	1	5.5
Breaking	2	25.0	5	62.5	1	12.5
Burglary	2	22.2	7	77.8	0	0
(sub total)	4	11.4	29	82.8	2	5.7
PROPERTY CRIME						
TOTAL	19	14.3	85	63.9	12	9.0
Manslaughter	5	33.3	6	40.0	4	26.7
Murder	4	33.3	6	50.0	2	16.7
Miscellaneous	4	66.7	2	33.3	0	0

NOTES and SOURCES: As in Table 4.4.

or it may be that the sample is too small to permit any firm conclusions; but the following case study amply illustrates their differential treatment.

John Hopkinson and Henry Bartlett were troopers under Colonel Charles Fairfax and Sir Henry Cholmley. In July 1648, after having taken part in some heavy fighting during the capture of a Royalist strong-hold at Thornhill, they came to the village of Horbury near Wakefield. Bartlett, who announced his arrival by shooting 'his carbine either in at a window or hard by it', accompanied Hopkinson in search of drink.⁵⁷ After

57. PRO, ASSI 45/2/2/67.

visiting several alehouses Hopkinson picked an argument with a local man, William Pollard the elder, and 'without any Provocation given' stabbed him to death."⁵⁸ When the man's son, William the younger, intervened Hopkinson killed him too.

Hopkinson and Bartlett were apprehended almost at once and, along with two eye-witnesses, were examined by Fairfax and Cholmley acting as justices of the peace. Hopkinson denied everything but the witnesses were adamant that they had seen him murder the Pollards. Thomas Walshaw deposed:

'he did see John Hopkinson with a sword or rapier run at William Pollard the elder and run him into the body whereof he presently died. And he did likewise see the said John Hopkinson presently after run his sword or rapier into the body of William Pollard the younger whereof he presently died.'

Robert Batley testified that he saw Hopkinson stab at Pollard younger 'several times ... and after stabbed him again in the high street'.⁵⁹

Within hours of the incident a coroner's jury was summoned. Walshaw and Batley repeated before the coroner their earlier informations, almost word for word. The jury found that the Pollards had been murdered by Hopkinson.⁶⁰

58. Zachary Grey, Examination of the third volume of Neal's history of the puritans, p. 66.
59. PRO, ASSI 45/2/2/66-68.
60. PRO, ASSI 45/2/2/69-70; ASSI 44/2 (Coroners' inquests, June-September, 1648).

What is of interest is what happened to Bartlett. Bartlett himself denied having had anything to do with the murders, and his story was supported by the two eye-witnesses. When pressed on this point Batley said Bartlett 'was present when the said Hopkinson run them both severally through ... yet did not assist him therein but wished him to be quiet'. According to Walshaw, when Hopkinson threatened to attack the Pollards 'Bartlett did bid him hold ... come away and not do the man any wrong'. When the coroner's jury announced its findings it made no mention of Bartlett.⁶¹

However, Bartlett was sent to York Castle for trial along with Hopkinson. The inquest verdict, which would normally serve as the indictment at the trial, was redrawn in order to include Bartlett as an accessory. At the Summer 1648 assizes Hopkinson was arraigned as the principal and Bartlett as accessory. Walshaw and Batley appear to have been the only two witnesses (to judge from the names endorsed on the indictment). Hopkinson was convicted of both murders and Bartlett was convicted as accessory. Both men were sentenced to death.⁶²

Bartlett's prosecution and subsequent condemnation flew in the face of the evidence. It came about because of the authorities' determination to stamp out military

61. PRO, ASSI 45/2/2/67, 69.

62. PRO, ASSI 44/2 (Summer 1648). There is nothing on the indictments to indicate that the sentences were not carried out.

disorder. According to Cholmley and Fairfax, these troopers were part of an extremely unruly body of men. The capture of Thornhill, Fairfax wrote to Parliament, had been delayed because so much time 'was spent in pacification of the soldier[s], that exclaimed for pay'.⁶³ Cholmley wrote to Parliament about the incident, complaining that because he did not have the power of martial law he had been unable to hang the soldiers straight away, as he had been urged to do by 'the Countrey' and 'the rest of the Souldiers'.⁶⁴ Bartlett's condemnation had nothing to do with the rules of evidence, or the execution of justice. It was intended as a warning to encourage the rest.

Some soldiers fared better. The courts occasionally proved susceptible to interventions by commanders, or other powerful figures. At the Summer 1642 assizes two Royalist soldiers, George Cowper and Peter Bennett, were found not guilty of housebreaking charges after the ransacking of the home of George Marwood, a puritan opponent of the king, despite the fact that Cowper made a lengthy confession during the pre-trial investigation. Although there is no direct evidence on this point, the acquittals were probably the result of jury-tampering by the king's supporters. The high sheriff, Sir Thomas Gower, one of the county's leading Royalists, was the official responsible for

63. BL, E. 454 (14).

64. Grey, *Examination of the third volume of Neal's history of the puritans*, p. 66.

empannelling the jury which Sir Robert Heath, another ardent Royalist and the judge on circuit, had earlier 'viewed and corrected'.⁶⁵

As the Bartlett trial shows, evidence could be manipulated to convict; and as the Bennett-Cowper case shows, juries themselves could be manipulated in politically sensitive cases. This leads us to the question of how far the petty jury's decisions were its own. Cockburn argues that both grand and petty juries were controlled by the judges; the verdicts returned in the jury's name were, in effect, those required by the bench.⁶⁶ How independent was the petty jury?

There can be little doubt that the judges exercised a great deal of authority during the trial proceedings. However, one or two snatches of information suggest that they did not have it all their own way. Captain John Hodgson, a former soldier for Parliament and a justice of the peace during the Interregnum, was indicted at assizes after the Restoration on two counts of speaking treasonable words against the king. The complainant was a neighbour of Hodgson's, Daniel Lister. The jury found Hodgson not guilty on both charges and, in Hodgson's words, 'the foreman, one Micklethwaite, told the judge openly in court, that if such informers and persons were suffered

65. PRO, ASSI 45/1/3/6; 45/1/4/10; 44/2 (Summer 1642); *LJ*, vol. 5, p. 302; Fletcher, *The outbreak of the English Civil War*, p. 301.

66. *Calendar of assize records: Introduction*, p. 104.

to go on, there would be no living for honest men.'⁶⁷ Hodgson was marked down as an enemy of the new regime, and his prosecution was supported and closely monitored by the local magistracy who, judging from the number of times they had him arrested, had little sympathy for him. The judge's attitude was revealed when he pointedly noted Hodgson's refusal to take the oath of allegiance. The petty jury's verdict, it seems safe to assume, went against the wishes of the bench.

Further, and more direct, evidence of a petty jury contradicting the judge's wishes, and getting away with it, comes from a 1647 petition to the indemnity committee. It refers to a civil matter defended at York assizes by Sir Edward Rhodes, a leading Parliamentary commander and magistrate. Rhodes complained that the jury had rejected Serjeant Greene's (the judge) propounding of a special verdict, which would have been to Rhode's liking, and found instead for the plaintiff.⁶⁸

It is true that as a civil matter the issues involved were different from everyday trials for felony. But the fact that a jury resisted the pressure of the judge in a case in which a leading figure in county politics had an interest indicates that juries were prepared to withstand judicial directives and come

67. *The autobiography of Captain John Hodgson*, ed. J.H. Turner, p. 53. The depositions in the case have survived: PRO, ASSI 45/6/1/75.

68. PRO, SP 24/71 (Rhodes vs. Fisher; petition of Sir Edward Rhodes, November 30, 1647).

to independent conclusions. It is worth remembering that in mid-seventeenth-century Yorkshire the freeholders and 'middling sort' artisans and tradesmen who made up grand and petty juries were, as earlier chapters showed, economically, socially and politically independent. That they were able to withstand judicial coercion should come as no surprise. The implications of jury independence were noted by the Earl of Newcastle; he found them profoundly alarming. In his famous *Advice to Charles II* he wrote:

'Ther is one thinge thatt hath been a greate mistake in the Genterye, & thatt was with their litle tinsell Pride thatt theye scornde to bee off Juries butt to bee a Justice off the Peace, or Debuty Leuftenante, with a Hauke & a Hounde & then all was well nott seeinge by this meanes the loste the power off the kingdome, & putt Into the handes off the Comons which hath been our Bane, for heertofore the beste knights & Gentlemen In the Counties used to bee off Juries, - Ande whatt Is the power off a Juerye Itt is this, Theye have a power over all mens personall Estates, Landes, & Livves Excepte the lives off Lordes butt for their Estates theye have, - & and all this Is putt In to the handes off the Comons by the pride off the Genterye, Itt weare well iff Itt Coude bee recoverde In to the handes of the Genterye agen ... which will bee a greate advantage to your Majestlie for there Is no Gentleman, butt hath a nerer dependance off your Majestlie then the free-holders have & and so more att your Comande.'⁶⁹

In other words: juries of substantial county gentlemen were more reliable, more 'dependent', than those composed of 'the middling sort'.

Despite this, we should not exaggerate the independence of Interregnum juries. The direct evidence is, after all, scanty, and the inclusion of justices of

69. *A catalogue of letters and other historical documents exhibited in the library at Welbeck*, ed. Strong, pp. 198-99.

the peace on assize grand juries would have operated as a control mechanism for the judiciary. In any case, despite the courtroom tensions indicated by Zachary Babbington in his *Advice to grand jurors in cases of blood* (1677), there was probably a large degree of co-operation involved in courtroom decision-making based on shared assumptions and priorities.

V

For almost half the prisoners who stood trial at quarter sessions and assizes the ordeal ended in acquittal. The fate of the remainder is shown in Tables 9.8 and 9.9. At assizes (for which the gaol book for the period 1658-1672 is the best source for looking at punishment) 12.6% of convicts were whipped and 39% granted clergy. The rest were sentenced to death - just over a quarter of the whole calendar and nearly half of those convicted. However, of these over one-third (eighty-four of 227) were reprieved. Of 849 prisoners who stood trial for felony at York assizes between 1658 and 1672 143 (16.8%) finally went to the gallows.

At quarter sessions the death penalty was by the mid seventeenth century almost unknown. Four executions took place between 1638 and 1665 and one order for execution was respited. The vast majority of convicts suffered either whipping or branding.

The basis on which punishments were awarded rested partly on the sanctions permitted by law, the key issue

TABLE 9.8
Judgments at York assizes, 1658-1672

	Not Guilty	Whipped	Clergy	Re- rieved	Hanged	Total
L.1658	24	4	7	4	7	46
S.1658	7	2	3	1	5	18
S.1659	8	3	13	7	8	39
L.1660	6	4	4	1	7	22
S.1660	23	6	8	6	2	45
L.1661	13	0	15	2	10	40
S.1661	20	7	4	3	4	38
L.1662	36	3	14	5	1	59
S.1662	4	0	7	4	4	19
L.1663	21	3	20	3	9	56
S.1663	9	1	9	1	2	22
L.1664	18	0	13	3	7	41
S.1664	9	1	4	4	6	24
L.1665	14	2	2	1	14	33
S.1665	14	3	1	4	6	28
L.1666	25	1	8	5	5	44
S.1666	16	2	3	1	6	28
L.1667	16	2	6	1	6	31
S.1667	12	1	6	2	9	30
L.1668	11	3	5	2	5	26
S.1668	11	0	2	1	0	14
L.1669	13	1	9	2	5	30
S.1669	3	1	2	2	6	14
L.1670	8	3	2	7	0	20
S.1670	5	0	2	3	3	13
L.1671	10	2	3	1	0	16
S.1671	7	1	2	1	3	14
L.1672	8	3	3	4	1	19
S.1672	9	0	6	3	2	20
TOTAL	380	59	183	84	143	849
%	44.8	6.9	21.5	9.9	16.8	of total calendar
%		12.6	39.0	17.9	30.5	of 469 convicted

- NOTES: 1. Figures refer to persons. Persons indicted for more than one offence have been counted only once, for the worst verdict.
2. It has not been possible to break down these totals by crime because the gaol book does not carry details of offences.

SOURCE: PRO, ASSI 42/1.

being whether or not a crime was clergyable. The most serious offences - horse-stealing, burglary, housebreaking, robbery, arson, counterfeiting, murder and infanticide - were by this period non-clergyable."⁷⁰

70. See above, pp. 216-18.

TABLE 9.9
Judgments at West Riding quarter sessions,
1638-1665 (Property crime)

	Whipped	Clergy	Re- rieved	Hanged	Total
1638	31	14	0	0	45
1639	5	21	0	0	26
1640	1	4	0	0	5
1641	5	4	0	0	9
1642	4	1	0	0	5
1647	7	6	0	0	13
1648	0	5	0	1	6
1649	0	4	0	0	4
1650	9	10	0	1	20
1651	3	5	0	0	8
1652	14	6	0	0	20
1653	2	13	1	1	17
1654	1	3	0	0	4
1655	7	2	0	0	9
1656	11	8	0	1	20
1657	14	5	0	0	19
1658	23	13	0	0	36
1659	17	14	0	0	31
1660	13	12	0	0	25
1661	12	15	0	0	27
1662	13	11	0	0	24
1663	15	12	0	0	27
1664	13	5	0	0	18
1665	10	14	0	0	24
TOTAL	230	207	1	4	442
%	52.0	46.8	0.2	0.9	99.9

NOTE: The totals here differ from those in Table 9.4 because in 188 of the 630 guilty verdicts recorded at quarter sessions in this period no judgment was noted on the indictment.

SOURCE: WYRO, QS 4/1-8.

Juries had an important function when it came to punishment because as well as finding verdicts they acted in a sentencing capacity. With their power to find the prisoner guilty of a lesser offence than that with which he was originally charged, or by undervaluing the goods specified on the indictment (a partial verdict), they effectively limited the

sanctions at the judge's disposal. Petty juries returned partial verdicts in approximately one-fifth of all property crime cases, and in about a third of all murder cases, thus either restricting the judge's ability to punish by imposing sentence of death (whipping was the prescribed punishment for those convicted of petty larceny - goods valued at under 1s), or giving the judge some choice when it came to deciding on the sentence (by either granting or withholding clergy). Juries only returned partial verdicts in a limited number of offences: most commonly in charges of sheep-stealing, in the theft of cloth, food and household goods (by undervaluing the goods); by reducing aggravated larcenies to simple theft and murder to manslaughter. Very occasionally, they returned partial verdicts in cases of horse-stealing (by finding that the accused stole only the saddle) and in cases involving the theft of money or outpursing (finding the accused guilty, for example, of stealing the purse, worth 2d, but not the money it contained).⁷¹ Invariably, prisoners against whom partial verdicts were returned were either whipped or granted clergy, and it was clearly the jury's expectation that they would not be executed. But there are examples of judges

71. See, for example, PRO, ASSI 44/6 (indictment of Christopher Walker, Lent 1656 - Walker was charged with horse-stealing but convicted of stealing the saddle); 44/7 (indictment of Elizabeth Ackroyd, Lent 1658 - Ackroyd was indicted for robbery from the person of John Tomlinson of 4s but found guilty of stealing 2d not from the person).

refusing clergy even after the return of a partial verdict and imposing the death penalty.⁷²

Prisoners unlucky enough to be convicted of non-clergyable offences did not necessarily go to the gallows. More than a third of those found guilty as charged at York assizes were remanded in prison (Table 9.8), and most of them were later pardoned and freed.⁷³ At York assizes it was also normal for one convict at each sessions to be reprieved on condition that he (or she, in one instance) acted as executioner or *carnifex*.⁷⁴ Some of those who acted in this capacity seem to have been freed immediately, others were remanded and held for a year or two.⁷⁵ The choice of who would act as *carnifex* rested, it seems, with the judge.

- 72. For example, PRO, ASSI 44/3 (indictment of William Kenningley *et al*, Summer 1649).
- 73. The gaol book for the period 1658-1673 carries details on those remanded: PRO, ASSI 42/1, ff. 3, 15, 28, 40 and *passim*.
- 74. Those designated as executioners had the word *carnifex* written on their indictments after the clerk had recorded the verdict: see, for example, PRO, ASSI 44/19 (indictment of Joseph Gawkroger, Lent 1647). The gaol book for 1658-1673 also identifies the executioners: ASSI 42/1, ff. 3, 15, 27, 40 and *passim*. The one female *carnifex* in this period, Ursula Sission, served as executioner at the 1641 Lent assizes. She was convicted of murdering her husband and entered a plea of pregnancy. Her accomplice, Leonard Tompson, was convicted and sentenced to death. Presumably, he died at Sission's hands, possibly a piece of deliberate irony on the judge's part: PRO, ASSI 47/20/6/734v.
- 75. Joseph Armitage, for example, was *carnifex* in Lent 1666, remanded after the assizes, remanded again the following summer, pleaded his pardon at the Lent 1667 assizes and delivered: PRO, ASSI 42/1, ff. 173, 189v, 198. In later years those who acted as *carnifex* were transported: ASSI 42/1, f. 249v, 263, 268.

The judge could also order postponement of the execution of women who 'pleaded their belly', that is claimed to be pregnant. Although it seems that by this period many such claims were fictitious, the great majority were successful. In most cases a plea was followed by a pardon. However, the women might have to remain in gaol for several years before release.⁷⁶

The point to emphasise is that the system of punishment was highly selective. Jurors and judges exercised a great deal of discretion in who was spared and who sent to the gallows. This point, which has received a great deal of attention from historians of crime and criminal justice, need not be laboured here.⁷⁷

While in general this discretion worked to the accused's advantage it could also be operated to secure exemplary punishments. A good example of this comes from Hale who presided over the trial of a soldier indicted for murder at Lincoln assizes in 1653. The charge had arisen out of an incident when a group of soldiers met a number of men, former Royalists, who were hunting in fields with fowling pieces. The soldiers accused the men of disobeying Parliament's ordinance barring Royalists from carrying arms and a

76. Isabel Thomson, for example, convicted of infanticide in 1658, had judgment respited and was remanded in gaol until 1664 when she was eventually pardoned: PRO, ASSI 42/1, ff. 3, 15, 28, 40, 51, 57, 74, 91, 105, 113, 119, 133v, 148v.

77. Beattie, *Crime and the courts in England*, ch. 8; King, 'Crime, law and society in Essex, 1740-1820', ch. 7; C. Herrup, *The common peace: Participation and the criminal law in seventeenth-century England*, ch. 6.

fight ensued in which the soldiers came off worse. A little later two of the soldiers returned to try to disarm the men and in the struggle a civilian was stabbed and killed. One soldier was convicted of manslaughter and the other of murder; the latter was sentenced to death. His commander, Colonel Whalley, urged that he be reprieved. Hale refused and ordered execution to follow immediately in order to prevent Whalley from securing a pardon.⁷⁸

VI

On the whole, however, the discretionary powers exercised by judges and by grand and petty juries favoured the accused. But why were the courts prepared to extend such leniency?

As far as verdicts are concerned this seems all the more surprising because in the majority of cases the evidence was there to convict. Explanations of jury rationale, because of the state of the evidence, must be tentative. But there are two points that seem to come through. First, most juries were reluctant to see prisoners condemned to death and went out of their way to avoid returning capital convictions. This is evident from the different conviction rates in different types of crime (Tables 9.4 and 9.5). Clergyable larcenies such as cattle- and sheep-stealing had higher

78. J.B. Williams, *Memoirs of the life, character and writings of Sir Matthew Hale*, pp. 37-38.

conviction rates than non-clergyable larcenies such as horse-stealing. In order to avoid sending men and women to the gallows juries were prepared to ignore compelling prosecution evidence in some cases and in others to reduce the seriousness of the charges.

Second, it appears that the priorities of the early-modern criminal trial were not necessarily those of the modern trial: juries were not solely concerned with legal innocence or guilt. In coming to an appropriate verdict they took into account more than just the legal facts: the whole background was important. Although to lawyers looking back at the early-modern trial the proceedings appear uncertain, rushed and at times chaotic, there was a flexibility about courtroom decision-making that made for a rough and ready kind of justice. The criminal trial before the lawyers was a fairly sophisticated working out of the interplay between law and communal notions of justice and morality." In this way the trial was a highly selective cull. The worst offenders were convicted and executed, the remainder, who, as earlier chapters have shown, were 'ordinary' men and women rather than 'hardened criminals', could be released. From one point of view, the strictly legal point of view, the acquittal and release of a large number of

79. Cf. T.A. Green, *Verdict according to conscience: Perspectives on the English criminal trial jury, 1200-1800* and C. Herrup, 'Law and morality in seventeenth-century England'.

technically guilty individuals can be seen as a failure in the early-modern system of policing; from another point of view it can be seen as a sensible and sensitive response by a system that was capable of reflecting both a legal concern for the facts and a communal concern for justice.

Chapter Ten

Conclusion

At first glance the system of law enforcement in Yorkshire appears to have been largely unaffected by the upheavals of the 1640s and 1650s. The courts of quarter sessions and assizes did not undergo any important structural changes, and there was little, apart from the fact that proceedings were in English after 1651, that was new about the way in which they operated. But this is not to say that the administration of criminal justice was immune from the shock waves of the Civil War. Law enforcement reflected in different ways the crises created by two decades of turmoil. The Civil War and dislocations that followed it led to more crime, and more crime of a serious nature, of which the rising volume of indictments in the later 1640s and early 1650s were symptomatic. There was a two-fold increase in reported riots and other large-scale violent disturbances and there was a significant increase in serious felonies such as horse-stealing and counterfeiting.

These increases can be attributed directly to conditions brought about by the Civil War. The counterfeiting networks that sprang up did so under cover of the collapse of the administration of justice

after 1642. The judicial hiatus also allowed the unlawful activities of soldiers to go unchecked. As the thesis has emphasised, much of the serious crime of the 1640s and early 1650s was committed by soldiers or ex-soldiers. Once re-established the courts played an important part in suppressing military criminality and disorder, compensating for the inadequacies and lassitude of military commanders. The manipulation of verdicts, some of them flying in the face of the evidence presented in court, the harsh sentences handed down to military offenders, and the exemplary executions that followed served notice to the often near-mutinous armies and levies of the authorities' determination to restore order in the county.

Whereas the courts eventually chalked up victories against the coining networks and the soldiery they appear to have been less successful in dealing with riots and disturbances, judging by the persistently large number of reported offences throughout the post-war period. This failure was probably due to the fact that the causes of these disturbances were more deep-seated, springing from bitter economic, religious and political divisions in society. They could not be suppressed, in the way the coiners and soldiers were, simply by vigorous judicial action. And the authorities' task was made all the harder by the intervention of the indemnity committee after 1647; this had the effect of keeping tensions on the boil and of polarising local disputes.

The impact of the Civil War on the operation of the courts was largely superficial and short-term, a matter of responding to emergencies rather than planned initiatives aimed at promoting particular policies. But it did have one profound affect on the administration of justice. Interregnum petty and grand juries in Yorkshire were vigorous and independent bodies. The freeholders and substantial artisans and tradesmen who sat as jurors were often, as the thesis has argued, economically and politically autonomous of the gentry (with due allowance made for local variations in the social structure). By the time of the Restoration some of the king's supporters, notably the reactionary Earl of Newcastle, had grasped the baleful implications of allowing men of the 'middling sort' to control such important institutions, especially the grand jury. Historians of the grand jury are aware of the radical changes that occurred in its composition after 1660 but to date have not linked them directly to the conflicts of the 1640s and 1650s. The Interregnum marks a watershed in the history of the grand jury, the high point of its existence as an independent body before being brought under closer gentry supervision.

If the forces of reaction were able at the Restoration to reconstruct the grand jury to their liking they were unable to set the clock back at another level of law enforcement. The position of the manor court in policing the village received fatal blows during and after the Civil War. This was mainly

the result of the divergence in the political allegiances of the gentry and the people. The more prosperous and ambitious freeholders and tenants who sided with Parliament and who had long resented the resurgent and aggressive manorialism characteristic of late-sixteenth- and early-seventeenth-century Yorkshire took the opportunity provided by the temporary displacement of the Royalist gentry to undermine manorial jurisdiction and the structures of local policing. Historians of manorial tribunals have noted their decline in the second half of the seventeenth century. The reasons for this have yet to be explored in depth and much remains to be researched in this area. But any explanation will have to take into account the critique of manorialism generated by and reflected in the Civil War rhetoric about the Norman Yoke and the rights of free-born Englishmen. The failure (or refusal) of the post-Restoration gentry to breathe a new lease of life into manorial jurisdiction was almost certainly an acknowledgment of the strength of popular feeling running against it. The position of the manorial courts was contingent on a whole host of economic, social and political forces which varied from place to place. In contrast to the grand jury, whose membership was entirely controlled by the élite, manorial courts could not be resurrected at will. Their decline is the most significant, as well as the least understood, aspect of the Civil War's impact on law enforcement.

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Abbreviations

<i>HJ</i>	<i>Historical Journal</i>
<i>NH</i>	<i>Northern History</i>
<i>P & P</i>	<i>Past and Present</i>
<i>THAS</i>	<i>Transactions of the Halifax Antiquarian Society</i>
<i>YAJ</i>	<i>Yorkshire Archaeological Journal</i>
<i>YASRS</i>	<i>Yorkshire Archaeological Society Record Series</i>

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A. Archidiaconal Records

(i) Visitation returns

V 1627/CB
V 1633/CB
V 1636/CB
V 1640/CB
V 1662-63/CB
V 1667/CB

(ii) Cause papers CP/H

B. Wills

Register of wills, vol. 40

BRADFORD DISTRICT ARCHIVES (15 Canal Road, Bradford)

A. Family and Estate Records

Spencer Stanhope MSS
Tong MSS

BRITISH LIBRARY

A. Manuscript Collections

Additional MSS, 31,007

Harleian MSS, 785

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B. Thomasson Tracts

E. 107 (12)

E. 112 (9)

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E. 114 (36)

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E. 202 (23)

E. 202 (37)

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CALDERDALE DISTRICT ARCHIVES
(Calderdale Central Library, Halifax)

A. Family and Estate Records

Ackroyd	HAS/B:22/26
Bordall-Midgley	MISC:517/1-6
Brearcliffe	MISC:332
	MISC:182
	HAS/B:22/27
Clay	MISC:336
Crossley	MISC:275/3
Dearden	FW:14 (unsorted)
	FW:42 (unsorted)
	MAC:20
Drake	HAS/B:13/19/1
Eastwood	FW:24
Farrer	HAS/B:22/29
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Calderdale District Archives (cont.)

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Power	MIC: 6
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Sunderland	CH: series SH: 6/LD/9, 38 HAS/B: 22/38
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**FRIENDS HOUSE LIBRARY
(Euston Road, London)**

A. MSS Collections

ARB MSS
Swarthmore MSS

**LEEDS CITY ARCHIVES
(Sheepscar, Leeds)**

A. Manorial records

TH.HX (Temple Newsam MSS)

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A. Northern Circuit Assize Records

- (i) Gaol book
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- (ii) Indictments
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poor physical condition)

- (iii) Depositions
ASSI 45/1/2-45/6/2 (1640-1661)

- (iv) Miscellaneous
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 - 47/20/3 (Constables' presentments)
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from jury service)
(ii. Certificates granting
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(iii. Jury lists)
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C. Exchequer Papers

Subsidy rolls and hearth tax records

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B. Parish registers

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